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No. 95-865

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

WINSTAR CORPORATION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX
VOLUME I OF II

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UNITED STATES COURT OF FEDERAL CLAIMS

No. 90-CV-773

STATESMAN SAVINGS, ET AL.

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/15/90	Complaint filed. Filing fee $120.
7/24/92	Opinion entered in this and 90-772C denying [5-1] motion to Dismiss pursuant to Rule 12(b), granting [4-1] motion for Summary Judgment as to liability.
8/27/92	See 90-8C for Order from CAFC granting defendant's interlocutory notice of appeal in this case and 90-772C.
11/13/92	Order entered in this, 90-773C and 90-772C directing defendant to file its answer 30 days after the CAFC rules in the pending interlocutory appeal.

UNITED STATES COURT OF FEDERAL CLAIMS

No. 90-CV-8

WINSTAR CORPORATION, ET AL.

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/2/90	Complaint filed. Filing fee $120.
4/21/92	Opinion entered finding that a binding contract existed between the government and plaintiffs and that a breach occurred, with the case to move forward to determine plaintiffs' injury etc.
7/24/92	See 90-773C for Opinion Consolidating this Case with 90-773C and 90-772C.
8/27/92	Order from CAFC granting defendant's interlocutory notice of appeal filed in this case and 90-772C and 90-773C.
11/13/93	Order entered in this, 90-773C and 90-772C directing defendant to file its answer 30 days after the CAFC rules in the pending interlocutory appeal.

UNITED STATES COURT OF FEDERAL CLAIMS

No. 90-CV-772

GLENDALE FEDERAL

v.

UNITED STATES OF AMERICA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/15/90	Complaint filed. Filing fee $120.
7/24/92	See 90-773C for Opinion granting [4-1] motion for Summary Judgment as to liability; denying defendant's motion to dismiss etc.
8/27/92	See 90-8C for Order from CAFC granting defendant's interlocutory notice of appeal in this case and 90-773C.
11/13/92	Order entered in this, 90-8C and 90-773C directing defendant to file its answer 30 days after the CAFC rules in the pending interlocutory appeal.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 92-5164

WINSTAR CORPORATION

v.

UNITED STATES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
August 28, 1992	Docket entries, docketed. Notice sent to the parties.
January 6, 1993	Argued. (Nies, CJ, Rich & Newman, JJ).
May 25, 1993	Reversed and remanded. (Nies, CJ) "Judgment entered"
August 18, 1993	Order: Petitions for rehearing granted, but only to make changes [as shown in order] in the text of the opinion; judgment of the court entered May 25, 1993, is vacated and opinion of the court, as amended, accompanying said judgment is withdrawn.

February 10, 1994	Submitted after oral argument by Douglas Letter, Charles J. Cooper and Jerry Stouck (in banc) (Nies, Rich, Newman, Archer, Mayer, Michel, Plager, Lourie, Clevenger, Rader and Schall)
August 30, 1995	Affirmed. Opinion for the Court filed by Chief Judge Archer, in which Circuit Judges Rich, Newman, Mayer, Michel, Plager, Clevenger, Rader, and Schall join. "Judgment entered"
August 30, 1995	Dissenting opinions filed by Circuit Judges Nies, and Lourie.

UNITED STATES CLAIMS COURT

Civil Action No. 154-90-8-C

WINSTAR CORPORATION,
1711 West County Road B
Suite 300 South
Roseville, Minnesota 55113,

and

UNITED FEDERAL SAVINGS BANK
1715 West County Road B2
Roseville, Minnesota 55113, *Plaintiffs*,

v.

THE UNITED STATES, *Defendant.*

COMPLAINT

For its Complaint against the United States (hereinafter sometimes referred to as the "government"), the plaintiffs Winstar Corporation ("Winstar") and United Federal Savings Bank ("United") state as follows:

1. Winstar is a Minnesota corporation organized in 1984 for the purpose of acquiring an insolvent savings and loan institution, Windom Federal

Savings and Loan Association ("Windom"), in a merger induced by the Federal Savings and Loan Insurance Corporation ("FSLIC") and the Federal Home Loan Bank Board ("FHLBB") pursuant to their statutory and supervisory authority over federally insured savings and loan institutions (hereinafter referred to as "thrifts" or "thrift institutions").

2. United is a Minnesota corporation, all of the stock of which is owned by Winstar. United was formed in 1984 for the purpose of acquiring Windom, which was merged into United that year.

3. As shown in more detail below, Winstar formed United and acquired Windom pursuant to Winstar and United's contract with the government, which obviated Windom's liquidation by FSLIC and FHLBB and, consequently, saved FSLIC's insurance fund millions of dollars that it would have been obligated to pay to creditors and depositors of Windom had FSLIC and FHLBB been forced to liquidate it. Winstar and United have fully performed their obligations under their contract with the United States. Although the United States has received all of the benefits of its contract with Winstar and United, the United States has breached its contract with the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. Law. No. 101-75, 103 Stat. 183. The United States' breach of its contract with Winstar and United entirely frustrates the purpose of the contract. Additionally, FIRREA's repudiation and abrogation of the government's contractual promises to Winstar and United constitute a taking of Winstar and United's property without just compensation in violation of the Fifth Amendment to the United States Constitution and a deprivation of Winstar and United's property without due process of law in

violation of the Fifth Amendment to the United States Constitution.

JURISDICTION

4. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1491(a)(1).

BACKGROUND

5. During the late 1970's and early 1980's unprecedented high interest rates pushed the thrift industry's cost of retaining and obtaining new deposits substantially above the rate of return on long-term, fixed-rate mortgages in thrift portfolios, precipitating a financial crisis in the thrift industry. By mid-1981, the thrift industry's cost of funds had risen to 10.31 percent, substantially exceeding the 9.75 percent average return on thrift mortgage portfolios. This "negative spread" widened in 1982.

6. In order to present massive withdrawals by depositors, thrift institutions were forced to pay higher rates on savings accounts. Savers nonetheless withdrew $31.8 billion more than they deposited in 1981-1982.

7. As a result of the substantial negative spread between the thrift industry's cost of funds and its return on assets, and the large net withdrawal of deposits, the thrift industry sustained an operating loss of $8.9 billion in 1981-1982, with a record $3.3 billion loss in the first half of 1982 alone. During that period the thrift industry's net worth declined more than $7 billion. In March 1982 Richard T. Pratt, then

Chairman of FHLBB, advised a congressional committee: "[T]he thrift industry in the United States is undergoing a severe financial crisis ... [H]igh and volatile interest rates ... are literally threatening the survival of this industry...."

8. Many FSLIC-insured thrift institutions either became insolvent or were threatened with insolvency in the early 1980's, and FSLIC's insurance fund was faced with the potential loss of many billions of dollars in claims by depositors of these insolvent or troubled thrifts. For example, during the last half of 1981 and the first half of 1982, more than 80 percent of all FSLIC-insured thrift institutions incurred operating losses. As of the end of 1981, almost 10 percent of FSLIC-insured thrift institutions had a net worth of less than 2 percent of their total assets. Three hundred fifty-six (356) FSLIC-insured thrift institutions with $72 billion in assets fell into this category.

9. Under the National Housing Act of 1934, as amended, FSLIC was at all times relevant to this action authorized to facilitate, upon terms and conditions prescribed by FSLIC, the merger of a failing FSLIC-insured thrift institution into a financially sound FSLIC-insured thrift institution by providing financial assistance in the form of promissory notes ("FSLIC notes") or cash contributions to the healthy institution or by guaranteeing it against loss by reason of the merger, so long as the cost of the financial assistance provided by FSLIC did not exceed the expense that would have been incurred in liquidating the institution and paying insurance claims upon its accounts.

10. Faced with a large number of failing thrift institutions, FHLBB adopted and aggressively implemented a policy of requiring insolvent or troubled

thrift institutions to merge into financially sound acquired institutions. With respect to many such "supervisory" mergers, FSLIC exercised its authority under the National Housing Act to provide assistance in the form of cash contributions, FSLIC notes, and/or guarantees to induce financially sound acquired institutions to merge with insolvent or troubled thrifts.

11. During the first 5 months of 1981, FSLIC provided financial assistance in 7 supervisory mergers. These 7 troubled FSLIC-insured thrifts had assets totaling $1.5 billion. FSLIC provided assistance in the form of cash contributions, FSLIC notes, and asset purchases at a total cost (at present value) of $344 million. FSLIC's present value cost of arranging these supervisory mergers was thus 22 percent of the total assets of the troubled thrifts, a typical cost-asset ratio for FSLIC-assisted supervisory mergers over the previous several years. Measured another way, the cost of arranging these supervisory mergers was 75 percent of the cost of liquidating the 7 trouble thrifts, also a typical ratio for FSLIC-assisted supervisory mergers. The financial assistance provided by FSLIC in these supervisory mergers represented a cash outflow of about 200 percent of the cash inflow to FSLIC during the 5-month period. In May 1981 FSLIC ran out of cash and was forced to sell at a discount over $150 million from its long-term bond portfolio to fund its current operations.

12. As the crisis in the thrift industry continued to worsen, and more and more FSLIC-insured thrift institutions became insolvent or troubled, FSLIC and FHLBB recognized that continuing to facilitate supervisory mergers with cash contributions and FSLIC notes would quickly and entirely exhaust the

insurance fund, which at the end of 1981 had total assets of $7 billion. Indeed, during the last 7 months of 1981, FSLIC provided financial assistance in connection with 23 supervisory mergers. The 23 failed thrift institutions had assets of $12.3 billion. If FSLIC had provided cash contributions and FSLIC notes at historic levels in order to induce financially healthy acquirer institutions to enter into these supervisory mergers, the cost to FSLIC would have been approximately $2.7 billion. Similarly, in 1982 FSLIC provided financial assistance in connection with 49 supervisory transactions (44 FSLIC-assisted mergers and 5 FSLIC-assisted holding company acquisitions), involving 77 insolvent or failing thrift institutions with assets totaling $31.2 billion. If FSLIC had provided cash contributions and FSLIC notes at historic levels in connection with these supervisory mergers, the cost to FSLIC would have been at least $6.9 billion. According to FSLIC's own calculations, providing financial assistance at historic levels would have exhausted the FSLIC insurance fund by April of 1982.

13. In mid-1981, FSLIC and FHLBB were thus forced to revise their policies and practices regarding the provision of financial assistance in supervisory mergers in order to prevent, or at least forestall, exhaustion of the FSLIC insurance fund. As described below, because FSLIC and FHLBB could no longer provide the amount of cash or other tangible financial assistance necessary to induce healthy acquirer institutions to merge with insolvent or troubled FSLIC-insured thrifts, FSLIC and FHLBB began inducing and arranging supervisory mergers by providing assistance in the form of an intangible asset—"supervisory goodwill." FSLIC and FHLBB also expanded the number of potential acquirers of

insolvent or troubled FSLIC-insured thrift institutions by permitting interstate mergers (in the absence of an acceptable merger proposal from a financially sound in-state acquirer institution), and inter-industry mergers (in the absence of an acceptable merger proposal from either an in-state or out-of-state thrift institution). In evaluating merger proposals, FSLIC's principal objective was to merge the insolvent or troubled thrift institution into a healthy acquirer at the lowest possible cost to FSLIC. As H. Brent Beesley, then Director of FSLIC, stated in April 1982: "Our criterion used in evaluating our alternatives is simple: Which alternative represents the least cost to the FSLIC and the public—all things considered?"

14. In order to induce financially sound acquirer institutions to merge with insolvent or failing FSLIC-insured thrifts with little or no cash contributions, FSLIC notes, or other tangible financial assistance from FSLIC, FSLIC and FHLBB relied primarily upon an aggressive application of the "purchase method" of accounting for the mergers. The Generally Accepted Accounting Principles ("GAAP") applicable at the time provided that in mergers and acquisitions using the purchase method of accounting, the book value of the assets and liabilities of an acquired thrift institution should be adjusted ("marked to market") to fair market value at the time of the acquisition, and that any excess in the cost of the acquisition (which includes any liabilities assumed by the acquirer) over the fair market value of the acquirer assets should be separately recorded on the acquirer institution's books as "goodwill"—an intangible, non-earning asset that may be amortized on a straight-line basis over a period of up to 40 years.

15. Because of the high interest rates prevailing at the time, the fair market value of the lower yielding

fixed-rate mortgage loans held by most acquired institutions was significantly less than the mortgage loans' book value (the face amount of the loans). Accordingly, in the typical supervisory merger at that time, the aggregate fair market value of the liabilities assumed by the acquirer institution exceeded the aggregate fair market value of the acquired institution's fixed-rate loans and other assets. The amount by which the acquired institution's liabilities exceed its assets is reflected on the merged institution's books as goodwill. Goodwill recorded in connection with a supervisory merger is known as "supervisory goodwill."

16. Supervisory goodwill was recorded on the merged institution's balance sheet as an asset includable in capital under GAAP and under FHLBB's regulations governing the minimum capital requirements of FSLIC-insured thrift institutions. The ability to include supervisory goodwill as capital for purposes of satisfying FHLBB's minimum capital requirements and to amortize it over a period of up to 35 years was essential to inducing healthy acquirer institutions to merge with insolvent or troubled FSLIC-insured thrifts. By assuring acquirer institutions in supervisory mergers that supervisory goodwill would be treated in the above-described manner for regulatory purposes, FSLIC and FHLBB were able to induce and arrange supervisory mergers with minimal cash contributions and other tangible financial assistance. FSLIC and FHLBB thus saved many billions of dollars in financial assistance that FSLIC would otherwise have had to pay in order to resolve scores of insolvent and troubled FSLIC-insured thrift institutions.

17. As part of its effort to induce and arrange supervisory mergers by using supervisory goodwill in

the above-described manner, FHLBB took steps to assure the thrift industry that GAAP would control in determining the application of purchase method accounting and the treatment of supervisory goodwill in supervisory mergers. In August 1981, FHLBB withdrew a proposed rule change that would have imposed regulatory standards more stringent than GAAP for accounting for supervisory goodwill. The proposed rule would have limited the inclusion of supervisory goodwill in regulatory capital to 30 percent of the merged institution's net worth and would have required that supervisory goodwill be amortized over a period no longer than ten years. In withdrawing the proposed rule, the FHLBB stated that a principal reason for its action was that the proposal could "discourage potential merger partners from consummating necessary mergers." In September 1981 FHLBB issued Memorandum R31b, which made clear that, as a matter of FHLBB policy, GAAP would control in determining the application of purchase method accounting and the treatment of supervisory goodwill in supervisory mergers.

18. During the last 7 months of 1981, FSLIC provided tangible financial assistance (e.g. cash, FSLIC notes) in connection with the merger of 23 insolvent or troubled FSLIC-insured thrift institutions with assets totaling $12.3 billion. These 23 supervisory mergers were arranged at a present value cost to FSLIC of $663 million, or 5.1 percent of assets—approximately one-fourth of the historical cost-asset ratio of FSLIC-assisted supervisory mergers. Measured as a percentage of the cost of liquidation, the present value cost of these 23 cases was only 18 percent, down from historical levels of 65-75 percent. Similarly, in 1982 FSLIC provided financial assistance in connection with 49 supervisory

mergers involving 77 FSLIC-insured insolvent or troubled thrifts with assets totaling $31.2 billion. The present value cost to FSLIC of these supervisory mergers was $1.2 billion, or 3.8 percent of assets. As a percent of the cost of liquidation, this present value cost was 16.3 percent. During this 19-month period, if FSLIC had been required to provide cash and other tangible financial assistance at historic levels in order to induce and arrange these supervisory mergers, the cost to FSLIC would have been approximately $9.6 billion. The cost to FSLIC would have been higher still if FSLIC had been forced to liquidate the acquired thrifts. The substantial reductions in costs to FSLIC of financial assistance in FSLIC-assisted supervisory mergers during this 19-month period were due in large part to FSLIC's use of supervisory goodwill through purchase method accounting. As then-Chairman Pratt stated in March 1982: "[B]y using mergers as a supervisory tool ..., we are seeking to spread as much of the industry's own net worth as possible over the industry's trouble spots as a means of conserving FSLIC's insurance fund." In effect, by using supervisory goodwill in accounting for supervisory mergers under the purchase method, FSLIC transferred most of its cost of resolving insolvent or failing thrifts to the healthy members of the industry and their shareholders.

19. Many acquirer institutions were induced by FSLIC and FHLBB to merge with insolvent or failing FSLIC-insured institutions with *no* tangible financial assistance from FSLIC, but *only* supervisory goodwill. In 1981 FSLIC and FHLBB arranged supervisory mergers for 58 insolvent or troubled FSLIC-insured thrifts with total assets of $3.6 billion, without providing any tangible financial assistance. In 1982 FSLIC and FHLBB arranged 166

supervisory mergers without providing tangible financial assistance. Most of these unassisted supervisory mergers arranged by FSLIC and FHLBB in 1981 and 1982 involved substantial amounts of supervisory goodwill.

20. In 1982 the Financial Accounting Standards Board, which promulgates GAAP, issued Statement of Financial Accounting Standards No. 72 ("FASB 72"), which amended GAAP applicable to mergers initiated after September 30, 1982. As applied to United, FASB 72 generally would require that goodwill be amortized over a period of approximately 15 years. This change in GAAP did not alter FHLBB's and FSLIC's regulatory policies and practices with regard to supervisory goodwill. For regulatory accounting purposes, FHLBB and FSLIC continued to induce healthy institutions to acquire failing thrifts by allowing supervisory goodwill to be included in capital and amortized over a period of time exceeding that now allowed by GAAP.

21. The nature of the problems affecting the thrift industry changed in 1983-1984. After mid-1982, market interest rates declined, and the thrift industry's "negative spread" improved. But in 1983 and 1984 thrifts increasingly faced severe asset quality problems. This asset quality problem threatened many thrift institutions that were just recovering from the negative spread problems of 1981-1982. Thirty-five percent of all FSLIC-insured thrifts lost money in the second half of 1983.

22. Although economic conditions improved in 1983, the number of problem cases and the volume of assets handled by FSLIC in default prevention transactions continued at record level in the year. The FSLIC resolved 53 problem cases involving $17.6 billion in assets in 1983. This marked a decrease from 77

FSLIC-resolved cases in 1982, but the complexity of the problem cases increased significantly. FSLIC realized significant cost savings by resolving most of these problem cases through interstate and interindustry acquisitions. Through aggressive use of purchase method accounting, FSLIC saved an estimated $2.4 billion over the cost of liquidation in resolving these problem cases.

23. Overall thrift industry profitability declined in 1984, despite the fact that interest rates were far below the 1981-1982 levels. In 1984 FSLIC resolved 27 problem cases involving $5.5 billion in assets. The continued growth in the size and complexity of problem cases requiring FSLIC intervention, however, created a record-high demand on FSLIC resources, precipitating a decline in FSLIC reserves from $6.4 billion at the end of 1983 to approximately $5.6 billion at the end of 1984. During 1984, despite FSLIC's efforts to obtain less costly resolutions, FSLIC was forced to place 9 institutions into liquidating receiverships. The other 18 problem cases were resolved by FSLIC at approximately 45 percent of the estimated cost of liquidation, or a savings of $693 million, largely through the use of supervisory goodwill to induce healthy institutions to take over the failing thrifts. One of the 27 problem cases of 1984, resolved through the use of supervisory goodwill, was the FSLIC-assisted takeover of Windom Federal Savings & Loan.

THE MERGER

24. In late 1983 Windom faced insolvency. In March of that year Windom's Board of Directors acknowledged that grounds existed for the appointment of a

conservator or receiver, and that Windom's failure could not be prevented without action by FSLIC. For the fiscal year ended June 30, 1983, the accounting firm of McGladrey Hendrickson & Co. reported a net loss for Windom of $2,766,269.00, and concluded that Windom "may be unable to continue in existence." As of December 31, 1983, Windom reported a net worth of negative $2.63 million on assets of $50.1 million.

25. As the FHLBB stated in a Resolution approving United's merger with Windom, "[s]evere financial conditions exist which threaten the stability of Windom." In 1984 FHLBB specifically found that "Windom is insolvent in that its assets are less than its obligations to creditors and others, including its members." In an effort to avoid the expense of liquidating Windom, FHLBB began seeking financially sound merger partners in 1983.

26. In soliciting merger proposals, FSLIC and FHLBB sought to attract financially sound acquirer institutions with sufficient financial and managerial resources to arrest Windom's further deterioration, and, over time, to place it on a sound financial footing. Winstar was such an institution.

27. In 1983 Winstar submitted a bid for the acquisition of Windom, and Winstar began negotiating with FHLBB and FSLIC regarding its proposed acquisition of Windom. Throughout the entire bidding and negotiating process it was understood that the entity that acquired Windom would be able to record as supervisory goodwill the amount by which the market value of Windom's liabilities exceeded the market value of its assets, and to amortize that goodwill over a long period of time, such as 30 to 40 years.

28. Under the terms negotiated by the parties, FSLIC promised to provide to United a cash

contribution of $1,950,000, plus a sum equal to Windom's aggregate negative net worth (the amount by which its liabilities exceeded its assets, measured at book value rather than fair market value). In return, Winstar agreed to form United and to invest $2 million in cash in United through the purchase of all of United's common stock.

29. FSLIC and FHLBB determined that Winstar's bid was the most attractive of all bids made for Windom. After FSLIC and FHLBB selected the bid, Winstar formed United, which entered into a "Combination Agreement and Plan of Merger" ("Merger Agreement") with Windom setting out the terms of the acquisition. The Merger Agreement was expressly conditioned upon FSLIC's execution of an Assistance Agreement approved by FHLBB.

30. The Merger Agreement was incorporated by reference into the Assistance Agreement among FSLIC, Winstar, and United. The Assistance Agreement expressly states that FSLIC had determined, pursuant to Section 406 of the National Housing Act, that Windom "is in danger of default and that the amount of [FSLIC's financial] assistance and indemnification would be less than the losses [FSLIC] would sustain upon the liquidation of [Windom] through a receivership accompanied by the payment of insurance of accounts."

31. In entering into the Assistance Agreement with Winstar and United, FSLIC determined that Winstar and United's proposal would entail the least amount of tangible financial assistance from FSLIC and that Winstar and United possessed the financial and managerial resources necessary to halt Windom's further decline and, over time, to restore it to profitability. In keeping with the terms negotiated by the parties, the Assistance Agreement called for

FSLIC to provide to United a cash contribution of $1,950,000, plus a sum equal to Windom's aggregate negative net worth (the amount by which its liabilities exceeded its assets, measured at face value rather than fair market value). The Assistance Agreement provides that the $1,950,000 cash contribution shall be directly credited to United's regulatory net worth requirements.

32. The Assistance Agreement provides that the accounting treatment for the transaction shall be governed by GAAP, except that where GAAP conflict with the Assistance Agreement, FHLBB or FSLIC regulations, or FHLBB or FSLIC resolutions or actions, then the Agreement, regulation, resolution, or action shall govern.

33. The Assistance Agreement expressly referred to FHLBB's Resolution No. 84-363 approving the supervisory merger. In that resolution, FHLBB, as the operating head of FSLIC, expressly determined, pursuant to its authority under Section 406 of the National Housing Act, that "(1) financial assistance by the FSLIC is necessary to prevent the default of Windom and to facilitate the Merger with [United], and (2) the amount of such assistance, to be provided in accordance with the terms and conditions of the proposed Assistance Agreement, would not exceed the amount reasonably necessary to save the cost of liquidating Windom through a receivership accompanied by the payment of insurance of accounts...."

34. The FHLBB Resolution recognized that the merger would result in goodwill, providing that United

> shall furnish an analysis, accompanied by a concurring option from its independent public accountants, satisfactory to the Supervisory Agent and to the Office of Examinations and Supervisions, which (i) specifically describes as of the closing date, any intangible assets, including goodwill or the discounts and premiums arising from the acquisition to be recorded on [United's] consolidated books; and (ii) substantiates the reasonableness and conformity with regulatory requirements of the amounts attributed to intangible assets, including goodwill, and the discounts and premiums and the related amortization periods and methods....

The conditions referred to in the FHLBB Resolution were satisfied by Winstar and United.

35. Also as part of the inducement for the merger, FHLBB set forth its commitment regarding the accounting treatment to be given to supervisory goodwill in a separate forbearance letter to United's Board of Directors. That forbearance letter confirms the parties' understanding that:

> For purposes of reporting to [FHLBB], the value of any intangible assets resulting from accounting for the merger in accordance with the purchase method may be amortized by [United] over a period not to exceed 35 years by the straight-line method ....

36. The forbearance letter also confirmed that United may book the $1,950,000 cash contribution from FSLIC "as a direct credit to its net worth."

37. The supervisory merger between United and Windom was consummated on July 12, 1984, in accordance with the terms and conditions set forth in the agreements described above. Under the merger Winstar paid out of its pocket $2 million to acquire Windom through its merger with United. The resulting institution became United.

38. Under the Assistance Agreement FSLIC contributed $1,950,000 in cash. FSLIC ultimately paid $3,694,499 as its contribution based on Windom's aggregate negative net worth.

39. In reliance upon FSLIC's and FHLBB's express agreements concerning the use of purchase method accounting, the assets and liabilities of Windom were adjusted to fair market value at the time of the supervisory merger, and the resulting excess of liabilities over assets was recorded on United's books as supervisory goodwill to be included in capital and amortized on a straight-line basis over a period of 35 years. The amount of supervisory goodwill ultimately recorded by United as a result of the acquisition of Windom was $10,654,419. United also included the FSLIC cash contribution of $1,950,000 as capital. In financial reports filed with FSLIC and FHLBB since the supervisory merger, United has consistently booked supervisory goodwill as an asset included in capital for regulatory purposes, in accordance with, and in reliance upon, FSLIC's and FHLBB's express agreements. United has also consistently amortized the supervisory goodwill over a period of 35 years on a straight line basis, in accordance with the agreements. Prior to the enactment of FIRREA, neither FSLIC nor FHLBB ever objected to United's treatment of supervisory goodwill.

40. FSLIC and FHLBB benefited enormously from the use of supervisory goodwill in connection with the supervisory merger of United and Windom. At the time of the merger, the fair market value of Windom's liabilities far exceeded that of its assets by $14.3 million. Liquidating Windom at that time would have cost FSLIC considerably more than $14.3 million, due to resolution costs such as brokerage fees and holding costs. Moreover, if the purchase method

of accounting for the supervisory merger had not been used and FSLIC and FHLBB had been required to provide tangible financial assistance to Winstar and United at pre-1981 levels, it would have cost FSLIC and FHLBB approximately $11 million to induce and arrange the supervisory merger.

41. After the merger with Windom, United's *tangible* net worth (i.e., exclusive of supervisory goodwill) was approximately *negative* $6.7 million. Obviously the purchase method of accounting for the proposed merger was integral to Winstar and United. Had Winstar and United not been permitted to record on United's books supervisory goodwill in the amount by which Windom's liabilities exceeded the fair market value of its assets, their acquisition of Windom on the financial terms proposed in their bid would have rendered United insolvent and subject to liquidation by FSLIC and FHLBB. Winstar and United would not have entered into such a transaction. Nor would they have made a proposal or entered into a transaction for the acquisition of Windom that did not include a lengthy amortization period in which to return Windom to profitability and to gradually replace the supervisory goodwill with tangible assets. Thus, Winstar's willingness to form United and to acquire Windom on the financial terms proposed in the bid, and Winstar's willingness to invest $2 million in United, were absolutely conditioned on FHLBB's and FSLIC's agreement to permit United to report supervisory goodwill as an asset included in capital for regulatory purposes and to amortize that supervisory goodwill over a 35-year period. Absent the specified accounting treatment, Winstar and United either would have insisted upon receiving more than $5,644,500 in tangible financial assistance from FSLIC or would have withdrawn the offer. In order to

maintain United's tangible capital at 3 percent of liabilities, the regulatory minimum prevailing at the time, FSLIC would have had to contribute $15.8 million in cash or other tangible financial assistance.

42. In 1988 Winstar purchased additional common stock of United for an additional $800,000. Winstar would not have made this investment in the absence of the United States' agreement to the specified accounting treatment for goodwill, or if Winstar or United had foreseen that the government would renege on that agreement.

43. Winstar and United have complied in good faith with all the terms and conditions of the agreements relating to the supervisory merger and have otherwise fully performed their undertakings in connection therewith.

44. Since the acquisition of Windom by Winstar and United, the institution's financial position has greatly improved. As of September 30, 1989 it would have cost approximately $13.2 million to liquidate United, more than $1 million less than the estimated $14.3 million cost to liquidate Windom before the merger.

45. FSLIC's and FHLBB's contractual promises, for which Winstar and United provided substantial consideration and on which Winstar and United detrimentally relied in fully performing their obligations under their agreements with FSLIC and FHLBB, entitle United to record supervisory goodwill arising from the above-described supervisory merger as an asset included in capital for purposes of regulatory capital requirements. Winstar and United's contract rights arising out of the above-described agreements with FSLIC and FHLBB constitute property within the meaning of the Fifth Amendment to the United States Constitution.

FIRREA

46. FIRREA was signed into law by President Bush on August 9, 1989. Section 301 of FIRREA establishes OTS as an office in the Department of the Treasury. Section 301 also establishes the position of the Director of OTS, who shall be subject to the general oversight of the Secretary of the Treasury, except that the Secretary may not intervene in any matter or proceeding before the Director unless otherwise provided by law. The Director is the chief regulator of the thrift industry, empowered by FIRREA to conduct examinations, proscribe regulations, and issue orders as necessary to insure the safe and sound operation of thrifts.

47. Section 301 of FIRREA requires the Director of OTS to promulgate final regulations establishing minimum capital requirements for federally insured thrifts. These minimum capital requirements became effective December 7, 1989, and require federally insured thrifts to:

(a) maintain "tangible capital," which excludes supervisory goodwill, in an amount not less than 1.5 percent of the thrift's assets;
(b) maintain "core capital," as defined in the statute, in an amount not less than 3 percent of the thrift's assets; and
(c) maintain "risk-based capital" in an amount not materially less than that required by the Comptroller of the Currency for national banks.

48. FIRREA provides that "tangible capital" shall not include supervisory goodwill, and that only limited amounts of "core capital" may be made up of supervisory goodwill. Prior to January 1, 1992, the amount of supervisory goodwill includable in core

capital may not exceed 1.5 percent of total assets. Thereafter, the amount of supervisory goodwill (as a percentage of assets) includable in core capital declines each year, in accordance with the following schedule:

January 1, 1991, to December 31, 1992—	1.0 percent
January 1, 1993, to December 31, 1993—	0.75 percent
January 1, 1994, to December 31, 1994—	0.375 percent
Thereafter	0 percent

For purposes of the minimum capital requirements, supervisory goodwill must be amortized over a period not to exceed 20 years.

49. FIRREA also requires the Director of OTS to enforce the following sanctions against federally insured thrifts that do not meet the minimum capital standards promulgated under FIRREA:

(a) After January 1, 1991, the Director must prohibit the asset growth of any federally insured thrift not in compliance with regulatory capital standards, except that the Director may approve a "limited growth exception" upon specified conditions. In addition, the Director may restrict the asset growth of any such thrift at any time prior to January 1, 1991.

(b) No later than January 6, 1990, the Director must require thrifts that do not meet minimum capital standards under FIRREA to submit a plan that (1) addresses the thrift's need for increased capital under FIRREA; (2) describes the manner in which the thrift will increase its capital to achieve the minimum capital standards; (3) specifies types and levels of activities

the thrift will engage in; (4) requires any increase in assets to be accompanied by specified increases in tangible and risk-based capital; and (5) is acceptable to the Director. The Director must treat any material failure to comply with such a plan as an unsafe and unsound practice.

(c) After January 1, 1991, the Director *must* require federally insured thrifts that do not meet minimum capital standards under FIRREA to comply with a capital directive which may include restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate. FIRREA permits, but does not require, the Director to exempt thrifts from receipt of a capital directive in certain circumstances.

50. The Director may impose other sanctions on federally insured thrifts that do not meet minimum capital standards promulgated under FIRREA:

(a) The Director, in his discretion, may treat any thrift's failure to maintain capital at minimum regulatory levels as an unsafe or unsound practice subjecting the thrift to a range of further actions by the Director, including, among other things, issuance of cease and desist orders, appointment of a conservator or receiver, and suspension or removal of officers and directors.

(b) Such thrifts also must notify the Director of the proposed addition of any individual to the board of directors or of the employment of any individual as a senior executive officer of the thrift 30 days before such addition or employment becomes effective, and the Director may

before the end of that 30 days disapprove the addition or employment.

51. Federally insured thrifts that do not meet minimum capital standards are characterized by FIRREA as "troubled institutions" and beginning February 4, 1990, will be prohibited form accepting brokered deposits subject only to a case-by-case waiver by the FDIC.

OTS CAPITAL REGULATION

52. On November 8, 1989, OTS published minimum capital regulations ("OTS capital regulation") pursuant to FIRREA. The OTS capital regulation became effective on December 7, 1989.

53. In accordance with FIRREA, the OTS capital regulation establishes a minimum "tangible" capital requirement of 1.5 percent of total assets and a minimum "core" capital requirement of 3 percent of total assets. Supervisory goodwill cannot be counted as "tangible" capital at all, and can be counted as "core" capital only in accordance with the phase-out schedule set forth in FIRREA (see paragraph 48 above).

54. FIRREA does not require that supervisory goodwill be excluded from capital for purposes of determining compliance with minimum "risk-based" capital requirements. Nonetheless, the OTS capital regulation permits the inclusion of supervisory goodwill in capital for purposes of the minimum "risk-based" capital requirement only in accordance with the phase-out schedule set forth in FIRREA for determining compliance with the minimum "core" capital requirement (see paragraph 48 above).

55. Apart from the requirements and restrictions imposed by FIRREA on federally insured thrift

institutions that fail to meet minimum capital requirements, the OTS capital regulation mandates a variety of additional consequences. For example, in addition to submitting a capital plan for achieving compliance with the minimal capital requirements, a non-complying thrift must, under the OTS capital regulation, certify that while the plan is under review by OTS, it will not (absent OTS approval) (1) grow beyond net interest credited, (2) make any capital distributions, or (3) act inconsistently with any other limitations on activities established by statute, regulation, or by OTS in supervisory guidance. If a plan is not approved by OTS, the submitting thrift "shall immediately and without any further action" refrain from increasing its assets beyond the amount held on the day it receives notice of the disapproval and comply with any other restrictions or limitations set forth in OTS's written disapproval of the plan. The OTS capital regulation further provides that OTS may, "through enforcement proceedings or otherwise," require any thrift that fails to meet any of its regulatory capital requirements to take one or more of the following corrective actions:

(a) increase the amount of its regulatory capital to a specified level or levels'
(b) convene a meeting or meetings with the OTS supervision staff for the purpose of accomplishing the objectives of this section;
(c) reduce the rate of earnings that may be paid on savings accounts;
(d) limit the receipt of deposits to those made to existing accounts;
(e) cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(f) cease or limit lending or the making of a particular type or category of loan;
(g) cease or limit the purchase of loans or the making of specified other investments;
(h) limit operational expenditures to specified levels;
(i) increase liquid assets and maintain such increased liquidity at specified levels; or
(j) take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

On or after January 1, 1991, these restrictions, "and any other restrictions the Director [of OTS] determines appropriate," may be included in a "capital directive" issued by the Director against a non-complying thrift. Finally, according to the OTS capital regulation, OTS must treat as an unsafe and unsound practice "any material failure by a savings association to comply with any plan, regulation, written agreement undertaken or order or directive issued to comply with the requirements of [the capital regulation]."

56. In "Thrift Bulletin 36," now effective, OTS specified that acceptance of a capital plan submitted by a non-complying thrift will be predicated on certain additional stringent conditions, including among others:

(a) The management and the board of directors must execute an operating agreement which may provide, among other things, that if specific targets within the plan are not met or the thrift takes any action that does not comport with the plan, certain activities will be

significantly restricted, a consent to merge agreement will be executed, or management and the board of directors will resign.
(b) The board of directors and senior management for the thrift must file an amendment, acceptable to the OTS District Director, to the capital plan within 15 days following an event or circumstance that materially affects the validity of the capital plan or its underlying assumptions. At a minimum, the capital plan must be reviewed and revised as necessary on an annual basis.
(c) The thrift must submit to the OTS District Director, within 20 days following the close of each calendar quarter, quarterly variance reports comparing actual capital to the targets established in the capital plan. Failure to file such variance reports shall constitute an unsafe and unsound practice. Variances that the District Director deems to be material may be grounds for revoking acceptance of the capital plan.

57. According to Thrift Bulletin 36, a thrift that fails to comply with any of its minimum capital requirements will be deemed to be in non-compliance upon "adoption" of the OTS capital regulation, rather than upon the rejection of any capital plan submitted by the thrift.

58. Thrift Bulletin 36 recognizes that, apart from the specific restrictions set forth in FIRREA and the OTS capital regulation, there are a significant number of related OTS regulations, rules, and policy statements that limit or restrict a variety of essential business activities (e.g., payment of dividends, establishment of branches, receipt of Federal Home Loan Bank advances, investments in securities and

real estate), by thrifts that do not meet minimum capital requirements. Thrift Bulletin 36 requires that thrifts "request and receive approval of specific, express exemptions" from the operation of such related regulations "as part of the capital plan to be deemed in capital compliance."

59. Because of the provisions of FIRREA and the OTS capital regulation excluding supervisory goodwill from capital for regulatory reporting purposes, United cannot currently satisfy the minimum capital requirements established by FIRREA and the OTS regulation and cannot come into compliance with such requirements in the foreseeable future.

COUNT I

60. Plaintiffs incorporate by reference paragraphs 1 through 59 above.

61. Winstar invested $2 million to acquire Windom in express reliance on the United States' agreement that, for regulatory purposes, the supervisory goodwill resulting from the acquisition of Windom was to be treated as an asset includable in the capital of United and amortized on a straight-line basis over a period not to exceed 35 years. Winstar later invested $800,000 in United in reliance on the same agreement. Also in reliance on the agreement, Winstar and United have operated and managed United since the merger, improving its financial position and greatly reducing the cost of liquidating United.

62. The United States has breached its contract with Winstar and United by refusing to allow United's supervisory goodwill to be treated as an asset included in the capital of that institution, and by refusing to allow that the supervisory goodwill be amortized over 35 years, for regulatory purposes.

63. Winstar and United are entitled to restitution in the amount of Winstar's investment of $2.8 million, plus the return of all benefits conferred upon the government through plaintiffs' purchase, operation, and management of Windom. Winstar and United currently estimate the value of such benefits, which is to be determined at trial, to exceed $1 million.

COUNT II

64. Plaintiffs incorporate by reference paragraphs 1 through 63 above.

65. The parties' agreement concerning the treatment of goodwill was an essential term and condition of the transaction, and was essential to the parties' purpose of allowing Winstar and United a reasonable opportunity to turn Windom from a failing institution into a profitable venture.

66. Winstar and United would not have agreed to acquire Windom in the absence of such accounting treatment, because United would have been left insolvent and because United would otherwise have been unable to manage itself without substantial regulatory oversight that would interfere with its business and prospects.

67. The parties to the transaction could not reasonably have foreseen that Congress would enact legislation that would be construed to extinguish Winstar and United's existing contract rights.

68. FIRREA's abrogation of the United States' contractual agreements renders United hopelessly insolvent, frustrates the entire purpose of Winstar and United's contract with the government for the acquisition of Windom, and deprives Winstar and United of the consideration for which they bargained.

69. Winstar and United are entitled to rescission of the transaction with the United States, and the return of Winstar's investment of $2.8 million, plus the return of all benefits conferred upon the government through plaintiffs' purchase, operation, and management of Windom. Winstar and United currently estimate the value of such benefits, which is to be determined at trial, to exceed $1 million.

COUNT III

70. Plaintiffs incorporate by reference paragraphs 1 through 69 above.

71. The provisions of FIRREA and the OTS capital regulation restricting the inclusion of United's supervisory goodwill for purposes of satisfying minimum capital requirements constitute a repudiation and abrogation of Winstar and United's contract rights, as described above, and effect a taking of Winstar and United's property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

72. Winstar and United are entitled to just compensation in the amount of their investment of $2.8 million, plus the return of all benefits conferred upon the government through plaintiffs' purchase, operation, and management of Windom. Winstar and United currently estimate the value of such benefits, which is to be determined at trial, to exceed $1 million.

COUNT IV

73. Plaintiffs incorporate by reference paragraphs 1 through 72 above.

74. The provisions of FIRREA and the OTS capital regulation restricting the inclusion of United's supervisory goodwill in capital for purposes of satisfying the minimum capital requirements constitute a repudiation and abrogation of Winstar and United's contract rights, as described above, and effect a deprivation of Winstar and United's property without due process of law, in violation of the Fifth Amendment to the United States Constitution.

75. Winstar and United are entitled to monetary relief in the amount of their investment of $2.8 million, plus the return of all benefits conferred upon the government through plaintiffs' purchase, operation, and management of Windom. Winstar and United currently estimate the value of such benefits, which is to be determined at trial, to exceed $1 million.

PRAYER FOR RELIEF

WHEREFORE, Winstar and United respectfully pray:

(a) That the Court award Winstar and United monetary relief in the amount of their investment of $2.8 million, plus the value of all benefits conferred upon the government through plaintiffs' purchase, operation, and management of Windom. Winstar and United currently estimate the value of such benefits, which is to be determined at trial, to exceed $1 million;

(b) That the Court award Winstar and United their costs, attorney's fees, and interest allowed by law; and

(c) That the Court grant such other and further relief as the law and evidence may justify and as the Court may deem just and proper.

Respectfully submitted,

Robert R. Vieth

Attorney of Record for Plaintiffs
WINSTAR CORPORATION and
UNITED FEDERAL SAVINGS
BANK

Of Counsel:

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Federal Home Loan Bank Board Memo
Federal Savings and Loan Insurance Corporation

Inter-Office Communication

DATE: March 14, 1984

SUBJECT: Viability Analysis
of Windom FS&LA,
Windom, MN
FHLBB No. 3058

FROM: Kevin Aucello
Financial Analyst, AED

TO: Bob Brick
Finanical Analuysis, MAD

I have performed a viability analysis regarding the proposed acquisition of the subject association by Windom Holding Company of Windom, Minnesota.

Relevant Assumptions

1. Balance sheet date as of January 31, 1984 and a ten year horizon was used for the analysis.

2. Purchase accounting is applied to the assets of Windom. The mortgage rate is 13.26%, the other loans rate is 13.13%. Goodwill is amortized over 40 years.

3. Cash up to the 5% of total assets will be invested at the average T-Bill rate. Cash above the 5% level will invested at a rate equal to the associations cost of money plus 250 basis points.

4. New mortgages earning the market rate will be made equal to 80% of available liquidity. Two points

will be taken into income for each dollar of mortgages originated. These mortgages will be ARMS with an assumed adjustment every five years.

5. The savings growth and future cost and investment assumptions are those contained in the January market standard market scenario.

6. The initial composite cost of money is 11.25%.

7. The operating expense ratio is 1.10%.

Acquirer Assistance:

1. The acquirer will make a cash contribution of $2,800,000 at the time of acquisition.

2. It is estimated that the resulting association will make dividend payments to the stockholders of:

Year:	1	2	3	4	5	6	7	8	9	10
$ of Net Income	50	60	70	60	50	50	50	50	50	50
$ in Thousands	0	140	150	150	160	250	340	450	560	690

FSLIC Assistance:

1. The FSLIC will make a cash contribution of $1,950,000 at the time of acquisition.

2. The FSLIC will infuse cash at the time of acquisition sufficient to bring net worth to zero.

Results: (000's omitted)

Year	*Total Assets*	*Net Worth*	*Net Income*	*WW/Assets (%)*
At Merger	$56,800	$4,290	$ —	7.6
1	61,990	2,830	(1,450)	4.6
2	67,650	2,920	90	4.3
3	72,990	2,990	70	4.1
4	77,980	3,090	100	4.0
5	83,620	3,250	160	3.9
6	90,510	3,490	250	3.9
7	98,040	3,840	340	3.9
8	106,270	4,280	450	4.0
9	115,260	4,850	560	4.2
10	125,070	5,540	690	4.4

McGladrey Hendrickson & Pullen
Certified Public Accountants

May 10, 1984

Mr. Harlan G. Halsne
Supervisory Agent
Federal Home Loan Bank Board
907 Walnut Street
Des Moines, Iowa 50309

RE: Accounting Treatment For the Merger of Windom Federal Savings and Loan Association into United Federal Savings Bank (an entity to be formed)

Dear Mr. Halsne:

As you are aware on May 3 and 4, 1984, Mr. E. Ted Yoch and Mr. Gregg Schneider, both of Rosewood Corporation, Mr. James Stephenson of the Faegre & Benson law firm in Minneapolis and myself met in Washington D.C. with members of the Federal Savings and Loan Insurance Corporation and the Office of the General Counsel.

During the meeting we discussed the fact that perhaps a better approach to the accounting treatment for the assistance from FSLIC could be utilized. It was felt that rather than recording the entire amount of the assistance as a permanent increase in the net worth of United Federal Savings Bank it might be better to split the assistance between net worth and a reduction in the recorded goodwill.

Accordingly, United Federal Savings Bank requests approval through this letter for recording the financial assistance received from the Federal Savings and

Loan Insurance Corporation at the date of acquisition in the following manner:

1. The amount of assistance applicable to specific scheduled loans in an amount totaling $1,950,000 to be recorded as a permanent increase in the net worth of United Federal Savings Bank.

2. The balance of the assistance which will be an amount equal to the negative net worth of Windom Federal Savings and Loan Association at the date of closing to be recorded as a reduction of the goodwill recorded in connection with the formation of United Federal Savings Bank.

If the accounting treatment requested herein is permitted, United Federal Savings Bank will have beginning net worth of $3,950,000 resulting from the $1,950,000 assistance from FSLIC and $2,000,000 injected by Winstar Corporation. This will mean that United Federal Savings Bank will begin its operations with an approximately 6.8% capital to asset ratio. It will also mean that the recorded goodwill at the date of acquisition will be reduced by the amount applicable to negative net worth which we estimate to be approximately $3,100,000, assuming that closing occurs prior to June 1, 1984. This will benefit United Federal Savings Bank's future operations since the amortization of the goodwill over the 35 year period will be reduced.

This request will modify the accounting treatment for the FSLIC assistance asked for in our letter dated December 6, 1983 to the attention of Ms. Margaret M. Meagher, which was signed by Duane D. Taut, Partner. All other matters in the December 6, 1983 letter will remain as stated. During our

discussion in Washington it was felt that this modification would hopefully not delay or present an impediment to the closing of this transaction at your earliest convenience. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

Robert E. Hiller
Partner

Encl.

cc: Mr. L. Ted Yoch
Mr. Rohan J. Samaraweera
Mr. Alan Hawkins
Mr. Brian Vooght

Windom FS&LA
Windom, Minnesota
FHLBB No. 3058

May 29, 1984

FINANCIAL INFORMATION PRESENTATION

Summary of Cost Alternatives	*$ Cash Outlay*	*$ Present Value*
Liquidation	8,830,000	12,336,000
Winstar Corporation	5,211,000	5,211,000

Liquidation

Liquidation Assumptions

1. Insured Savings	$43,368,000
2. Uninsured Savings	789,000
3. Number of Insured Accounts	7,965
4. Insurance Cost Per Account	$25
5. Receivership Life	3 year
6. FSLIC Opportunity Cost	10,28%
7. Assets as of 1/31/84	49,200,000
8. Net Worth as of 1/31/84	(3,061,037)
9. Mortgage Market Yield	14.73%

Cost of Liquidation	*$ Net Cash Outlay*	*$ Present Value*
Payout Insured	$43,368,000	$43,368,000
Insurance Payment Cost	199,000	199,000
Total Cash Outflow	43,567,000	43,567,000
Recovery from Receivership	34,737,000	31,231,000
Total Cost to FSLIC	8,830,000	12,336,000

Windom FS&LA
Windom, Minnesota
FHLBB No. 3058

Costing Sheet
($000)

Proposal of Bidder: Winstar Corporation

Date Prepared: May 29, 1984

AED Analyst: Nancy Schaen
MAD Analyst: Bob Brick

Assistance:

1. The FSLIC will make a cash contribution of $1,950 at the time of acquisition.

2. FSLIC will infuse cash at the time of acquisition sufficient to cover Windom's negative net worth. (Net worth as of 4/30/84 equals –3,061 plus $200 for anticipated losses for two months to follow).

3. The acquirer will make a cash contribution of $2,000 at the time of acquisition.

4. It is estimated that the resulting association will make dividend payments to the acquiring stockholders of:

Year:	1	2	3	4	5	6	7	8	9	10
$ of Net Income	50	60	70	60	50	50	50	50	50	50
$ in Thousands	240	300	410	420	430	590	770	970	1220	1490

Data for: April 1984 Scenario: April 1984

Cost of Proposal:	*$ Net Cash Outlay*	*$ Present Value*
Cash Contribution	1,950	1,950
Negative Net Worth	3,261	3,261
Total Cost to FSLIC	5,211	5,211

Federal Home Loan Bank Board Memo
Federal Savings and Loan Insurance Corporation

Inter-Office Communication

DATE: May 30, 1984

SUBJECT: Windom FS&LA
Windom, MN
FHLBB No. 3058

FROM: Nancy Schaen
Financial Analyst, AED

TO: Bob Brick
Financial Analyst, MAD

Per your request I have performed a viability analysis regarding the proposed acquisition of the subject association by Winstar Corporation, a unitary holding company in Windom, Minnesota.

Relevant Assumptions

1. Balance sheet data as of April 30, 1984 was used as well as up-to-date costs and yields for the association.
2. The mortgage discount rate at the time of the analysis is 14.73%.
3. The April 1984 standard market rate scenario and a ten year horizon were used for the analysis.
4. Goodwill is amortized over 35 years.
5. As per Winstar's business plan, it was assumed the association will immediately sell $24,800 of their original mortgage portfolio and reinvest at higher yields.

Acquirer Assistance

1. The acquirer will make a cash contribution of $2,000,000 at the time of acquisition.
2. It is estimated that the resulting association will make dividend payments to the acquiring stockholders of:

Year:	1	2	3	4	5	6	7	8	9	10
$ of Net Income	50	60	70	60	50	50	50	50	50	50
$ in Thousands	240	300	410	420	430	590	770	970	1220	1490

FSLIC Assistance

1. The FSLIC will make a cash contribution of $1,950,000 at the time of acquisition.
2. The FSLIC will infuse cash at closing sufficient to cover Windom's negative net worth.

Viability Results

1. Total assets of Windom FS&LA as of 4/30/84 equal $49,200,000.
2. Net income remains positive over the life of the analysis.
3. New worth remains positive over the life of the analysis.
4. The total assets, net worth, net income, and net worth to total liabilities figures are as follows:

($000 Omitted)

Year	*Total Assets*	*Net Worth*	*Net Income*	*Net Worth/ Total Liabilities %*
0	55,030	3,950	—	7.73
1	61,020	4,190	240	7.37
2	67,260	4,380	200	6.97
3	73,230	4,560	180	6.64
4	79,110	4,840	280	6.52
5	85,650	5,270	430	6.56
6	92,840	5,860	590	6.74
7	100,760	6,630	770	7.04
8	109,470	7,600	970	7.46
9	119,070	8,820	1,220	8.00
10	129,620	10,310	1,490	8.64

Federal Home Loan Bank Board — Memo
Office of Examinations and Supervision

Inter-Office Communication

DATE: June 1, 1984

SUBJECT: Windom FS&LA
Windom, MN
FHLBB No. 3058
FSLIC-Assisted
Conversion to a FSB,
and Acquisition by
Winstar, a Holding Company

FROM: Robert J. Moore

TO: Joseph M. Arendes
Assistant Director

We have reviewed the materials forwarded with your memo of February 17, 1984 relative to the subject FSLIC-assisted conversion and acquisition.

We concur with the opinion of the independent public accounting firm, McGladrey, Hendrickson & Co. (now McGladrey, Hendrickson & Pullen) that the purchase method of accounting is appropriate for the acquisition of Windom.

Further, we have no objection to the accounting forbearance outlined for purposes of reports to the FHLBB.

Deputy Director
Program/Administration

OES:TH:njw

FEDERAL HOME LOAN BANK BOARD

Office of Supervisory Agent • Eighth District

MEMORANDUM

DATE: June 28, 1984

TO: J.J. Finn
Secretary to the Board

FROM: Harlan G. Halsne
Supervisory Agent

SUBJECT: *S-Memorandum—Proposed Supervisory Conversion of:*

Windom FS&LA
Windom, Minnesota
Docket No. 3058

from the Federal Mutual to Federal Stock Savings Bank Form of Organization

The Merger of Windom FS&LA

with

United Federal Savings Bank, a de novo stock saving bank wholly-owned by:

Winstar Corporation, a newly formed holding company

I. *Proposal*

Winstar Corporation (Winstar), a newly formed Minnesota Corporation, proposes to acquire Windom Federal Savings and Loan Association,

Windom, Minnesota (Windom). The transaction will involve the supervisory conversion of Windom Federal Savings and Loan Association from a federally-chartered mutual savings and loan association to a federally-chartered stock savings bank. Following the conversion, Windom Federal Savings and Loan Association will be merged with United Federal Savings Bank (United FSB), a de novo wholly-owned subsidiary of Winstar.

The Office of Examinations and Supervision (OES) has no supervisory objection to this proposal. The remainder of this memorandum will discuss its financial and supervisory aspects.

II. *Condition of Failing Association—Windom FS&LA*

As of April 30, 1984, Windom's assets totalled $49.2 million, with a deficit net worth of $3.1 million. Insolvency resulted from both substantial operating losses and substantial actual or indicated losses on loans and real estate owned. Operating losses were incurred during the past several years due to (1) increased cost of savings resulting from a shift in savings capital to higher rate accounts; (2) excessive levels of borrowed money resulting from the need to fund nationwide loan participation commitments; and (3) falling yields resulting from high levels of non- or low-earning assets. Actual or indicated losses on loans and real estate owned were incurred or recognized over the past several rears primarily as a result of deficient underwriting of major nationwide participation loans. The following table summarizes Windom's relevant financial history:

SEMIANNUAL DATA
(in thousands)

	Quarterly Period Ended (in thousands)	Semiannual Periods Ended (in thousands)				
	3-31-84	12-31-83	6-30-83	12-31-82	6-30-82	12-31-81
Assets	$47,711	$49,367	$49,176	$49,724	$49,552	$46,765
Net Worth	$(2,963)	$(2,635)	$(1,648)	$442	$1,161	$1,327
Net Woth/Assets	(6.2%)	(5.4%)	(3.3%)	.9%	2.3%	2.8%
Yield on Investments	10.1%	10.0%	10.8%	11.2%	12.4%	12.4%
Cost of Money	10.6%	11.3%	11.0%	12.3%	12.4%	11.7%
Spread	(.5%)	(1.3%)	(.2%)	(.9%)	0	.7%
Net Income	$(328)	$(987)	$(2,090)	$(719)	$(166)	$(11)
Savings	$44,514	$43,870	$42,085	$36,964	$35,366	$33,937
Advances and Borrowed Money	$6,000	$7,000	$8,600	$12,205	$12,746	$11,157
Specific Reserves:						
Repossessed Property	$1,290	$1,290	$1,130	0	0	0
Mortgage Loans	$162	$133	$370	0	0	0
Scheduled Items/ Assets	NA	5.8%	7.0%	8.4%	5.1%	3.4%

Windom's existing problem assets are briefly summarized as follows:

A. Perkins Road Development, Inc.—122 Unit Ramada Inn—Stillwater, Oklahoma—Loan to Facilitate Sale of Real Estate Owned

Perkins Road Development, Inc. (Perkins) was formed by Windom and three other original loan participants to dispose of a 122 unit motel acquired by deed in lieu of foreclosure. Perkins sold the property in 1982. The sale involved below market rate financing, deferred equity contributions and other favorable terms. As of December 31, 1983, Perkins' investments totalled $3,908,959. Windom's share equals $1,200,113. There is no current appraisal of this property. As of June 1, 1984, payments were $245,000 in arrears. The buyers have invested $510,000 equity in the project.

B. Carson, Inc.—Macienda Taos—13 Unit Condominium Project—Taos, New Mexico—Real Estate Owned

Carson, Inc. was formed by Windom and six other original loan participants to complete and market a 13 unit condominium acquired by deed in lieu of foreclosure. Total investment in this project as of July 31, 1983 totalled $4,681,676. A May, 1983 appraisal estimated value at $1,750,000 indicating a $2,931,575 loss. Windom's share of this loss equals $1,064,187. A specific reserve was established in this amount in June, 1983.

C. Tonapah, Nevada—30 Townhouses—Real Estate Owned

This property was acquired by deed in lieu of foreclosure in October, 1982. The association's 75 percent interest totalled $1,217,378 as of July 31, 1983. The most recent appraisal indicated a loss of $159,878 for Windom. A specific reserve was established in this amount in September, 1983.

D. Other Major Scheduled Loans

Windom's interest in five (5) other major scheduled loans and real estate owned totalled $1,926,781 as of July 31, 1983. Appraisals indicated losses totalling $74,880 on two of the projects. Specific reserves have been established in the amount of $66,200.

III. *Condition of Industry in Des Moines Bank District*

There are 199 insured institutions in the Eighth FHLBB District. Assets of these insured institutions totalled $43.6 billion as of March 31, 1984.

As of March 31, 1984, OES projects that eight (8) Eighth District insured institutions, representing assets of .8 billion dollars of 1.8 percent of total Eighth District insured assets, will be insolvent within the next twelve months.

IV. *Supervisory History*

Primary supervisory concerns in Windom's most recent regular and special examination reports

were directed to (a) poor operating results and net worth position and (b) serious nationwide participation loan underwriting deficiencies which resulted in indicated losses and high levels of low- and non-earning assets. The need for close monitoring became apparent in December, 1981 when a regular examination first disclosed large increases in scheduled items and numerous participation loan underwriting deficiencies. A subsequent follow-up examination conducted in July, 1982 disclosed the possibility of significant indicated losses and a rapidly declining net worth position. Upon receipt of this follow-up report, supervision immediately arranged a meeting with Windom's Board. The discussion at the meeting focused on the possibility of Windom's continued existence in light of operating results and possible indicated losses. The association did not agree that the indicated losses were warranted. They were given until December, 1982 to support their contention. The Board was apprised of what actions would be necessary should the association's position continue to deteriorate. It was suggested that the Board begin to consider all options.

The next development took place in January, 1983 when a review of the December, 1982 monthly report disclosed significantly greater operating losses than anticipated and a consequent potential for insolvency by March, 1983. When contacted, management indicated that the December results were due to extraordinary adjustments and that 1983 losses would be manageable. In early 1983, Supervision assisted Windom's attempt to obtain net worth certificates. However, during March, 1983, it was determined that insolvency could not be avoided even with net worth certificates.

Operations had continued to decline, and the receipt of appraisals confirmed the existence of indicated losses on association real estate owned and participation loans. The association became insolvent in March, 1983 upon the establishment of certain requested specific reserves. Windom's Board signed a Consent Resolution on March 11, 1983. The resolution provided, among other things, that the FSLIC and Supervision could negotiate for Windom, and that the Windom Board would approve any resulting plan of merger, consolidation, or transfer of assets and liabilities. Supervision worked towards an unassisted merger until additional indicated losses on association assets made such a solution impossible.

The following table provides information regarding Windom's recent examination report ratings:

Date	*Exam Type*	*Composite Evaluation*	*CRA Evaluation*
8-15-83	Special Limited	40	3
2-24-83	Supervisory	40	3
7-29-82	Special Limited	NA	NA
12-07-81	Supervisory	20	3

Since the Special Limited Examination dated August 16, 1983, Windom has continued to incur substantial operating losses primarily as a result of high levels of low- and non-earning assets and the continued shift in savings capital to higher rate accounts.

V. *Pledged Accounts*

There are no pledged accounts at Windom.

VI. *Condition of Acquirer—Winstar Corporation, Roseville, Minnesota*

A. *General*

Winstar Corporation is a newly formed corporation, which, if its application for acquisition of Windom is approved, will become a holding company. Winstar will be capitalized with $2,250,000 in cash, of which $1,750,000 will be borrowed from Norwest Bank, Minneapolis. The balance of $500,000 will be contributed by the five principals. The $1,750,000 to be borrowed from Norwest will be secured by 100 percent of the capital stock of United FSB issued at the time of its organization. Winstar principals will personally guarantee $500,000 of this debt. Interest will be at prime plus 1 percent, adjustable annually. Repayment will be according to a "Minimum Principal Debt Reduction Schedule". (See Exhibit S-14). Norwest reserves the right to alter the terms and conditions of the credit at each annual renewal.

Winstar will initially capitalize United FSB by purchasing its stock for $2,000,000 cash.

Winstar will pay a $100,000 brokerage fee to Newlin Bank Sales in connection with the acquisition of Windom. The fee, at 5 percent of sales price, involves an assumption by Winstar of a finder's fee obligation of Douglas Kratz. Kratz's obligation arose out of a written agreement between Newlin Bank Sales and himself to pay a 5 percent sales price finder's fee upon the consumation of any purchase of any institutions brokered by Newlin Bank

Sales. Newlin Bank Sales had originally presented the Windom opportunity to Kratz. Kratz would have been obligated to pay the fee upon consumation of purchase. Kratz, however, chose not to pursue this investment. Kratz presented the Windom opportunity to the organizers of Winstar on the condition that if the transaction was consumated, Winstar would pay the $100,000 Newlin fee, plus a $15,000 fee to Kratz. These fees will be paid entirely from Winstar funds. No fees will be paid from FSLIC funds infused into the institution as FSLIC assistance. We have no objection to the payment of these fees.

The five (5) principals of Winstar have a combined net worth exceeding 14 million dollars. This amount consists primarily of real estate equities and stock in closely-held corporations. The corporations are involved in mortgage banking activities and in real estate management, finance, development, and syndication. Net worth of the principals are thus concentrated in non-liquid real estate and real estate related investments. Net income of the principals ranged from $82,000 to $131,750 and aggregated $505,000 in 1983.

One of the principals of Winstar, E. Ted Yoch, was director of Northern Federal Savings and Loan Association, Minneapolis, Minnesota, from 1978 to 1981. Northern was the subject of a supervisory merger in 1983. Mr. Yoch's selection as a director was pursuant to a supervisory request that Northern replace certain board members with outsiders. The selection of Mr. Yoch was approved by Supervision. We have no objection to Mr. Yoch as a principal in the acquisition of Windom.

B. *Business Plan*
Winstar has prepared a comprehensive business plan for United FSB. (See Exhibit S-13). The plan meets the content requirements of SP-35, and appears to present a reasonable formula for the initial operation of United FSB. We have no supervisory objection to the business plan. In addition to reviewing the business plan, we have reviewed the viability analysis prepared by the Analysis and Evaluations Division FSLIC. In our opinion, the association will be viable following conversion.

C. *Holding Company Act Standards*
We find no statutory basis for disapproval of the application of Winstar for approval to become a savings and loan holding company through its acquisition and control of Windom. Pursuant to Section 584.4(c) of the Holding Company Regulations, this office, in conjunction with the Office of the FLIC, has reviewed the financial and managerial resources and future prospects of Winstar. We have no reason to believe that the proposed acquisition of Windom would be deterimental to the savings accountholders of Windom or the insurance risk of FSLIC.

D. *Change of Control Issues*
Winstar is a *de novo* holding company. There are no change of control issues or requirements in connection with this proposal.

E. *Community Revinvestment Act*
Windom's recent examination reports indicate satisfactory CRA ratings. The business plan prepared by Winstar for United FSB appears

to establish community reinvestment goals and policies which would, if adhered to, provide continued CRA compliance.

VII. *Personnel Issues*

Winstar proposes to retain an advisory board at the Windom United FSB office to consist of John Gelle, Ted M. Weeks, August W. Lerner, Roger L. Benson, J.A. Dick and Frank C. Jungas, all current Windom Board members. The advisory board will meet monthly. Each member will receive $100 per meeting attended. The advisory board's responsibilities will be to generate goodwill and new business, participate in planning meetings, and give advice on borrower credit worthiness, marketing strategy and history of troubled loans. Each member will serve at the pleasure of the Board of United FSB.

The principal managment change will be the addition of Thomas C. Daniel as Chief Executive Officer of United FSB. Winstar entered into an employment contract with Mr. Daniel on June 1, 1984. (See Exhibit S-9(e). We have reviewed this contract and find that it conforms to the requirements of Sections 563.39 and 571.5(d)(4) of the Insurance Regulations, and Section 545.122 of the Federal Regulations. Mr. Daniel apparently has 12 years experience in various phases of finance and banking. We have no objection to the selection of Mr. Daniel as Chief Executive Officer of the proposed United FSB.

FSLIC has agreed to allow United FSB to be governed by a Board of Directors of between 6 and 15 members. This is below the

standard seven (7) member minimum charter requirement of Section 552.3. We have no objection.

VIII. *Stipulations*

A. *Requested Dividend Restriction Waiver*

Winstar has requested that United FSB be allowed to pay dividends from available net income as follows:

1984	50%
1985	50%
1986	60%
1987	70%
1988	60%
1989 and after	50%

The Analysis and Evaluations Division of FSLIC has estimated that with the requested dividend restriction waiver, the dividends from United FSB wil permit Winstar to meet its debt service requirements. FSLIC has agreed to the requested dividend forbearance. We have no objection to this request. We recommend that the Resolution limit payment of dividends to 50 percent of available net income, but that the limitation be waived during the years and for the percentages requested by Winstar. The forbearance letter attached at Exhibit S-12, provides the waiver of the dividend restriction for the years requested by Winstar.

B. *Net Worth Maintenance Restriction*

We recommend that Winstar be required to maintain net worth at the level required by Section 563.13(b) of the Insurance Regulations

for institutions insured 20 years or more without regard to any net worth assistance for which United FSB may qualify, and to infuse additional equity if necessary. We also recommend that United FSB be required to waive any right to net worth assistance under the net worth certificate program.

C. *Stock Issuance and Transfer Restriction*

We recommend that Winstar and United FSB be required to stipulate to certain stock issuance and transfer restrictions. Specifically, that, for the term of the Assistance Agreement or three years from the date of the merger, whichever is longer:

1. Winstar stipulates to maintain control over United FSB and to not sell, pledge (except as security for initial acquisitions to Norwest Bank, Minneapolis, Minnesota), transfer, or otherwise dispose of United FSB stock, unless the Corporation gives its written consent.

2. United FSB stipulates that it will not issue stock, stock options or warrants to any person other than Winstar without the Corporation's written consent.

X. *Accounting Issues*

The independent accounting fire of McGladrey, Hendrickson and Company stated in a December 6, 1983 letter to FSLIC that the proposed acquisition requires the use of the purchase method of accounting, and that loan discounts and intangible asets will be amortized under regulatory accounting principles.

In a letter dated June 1, 1984 to Regional Director Arendes, Deputy Director Moore stated that purchase accounting was appropriate for the transaction.

XI. *Service Corporation Issues*

There are no service corporation issues. The association wholly-owns Azure, Inc., and partially owns two other service corporations. The activities of these three corporations are limited to the salvage of Windom problem assets.

III. *Forbearances*

In addition to their request for a waiver of the dividend restrictions for 1986, 1987 and 1988 as discussed above, United FSB has requested three standard forbearances presently approved by the Bank Board in connection with supervisory mergers. A copy of the forbearance language is attached at Exhibit S-12. We have no objection to the granting of these additional forbearances.

/s/ Harlan G. Halsne
HARLAN G. HALSNE
Supervisory Agent

Enclosures

I concur:

/s/ Joseph M. Arendes
JOSEPH M. ARENDES
Assistant Director for Regional Operations

I concur:

/s/ William J. Schilling
WILLIAM J. SCHILLING
Director, OES

FEDERAL HOME LOAN BANK BOARD

To all to whom these presents shall come, Greeting:

I CERTIFY that hereto annexed are true copies of documents described below made from records of the Federal Home Loan Bank Board, which records are in the official custody of the Secretary to said Board and are on file in its offices at 1700 G Street, Northwest, Washington in the District of Columbia, to wit:

Copy of Resolution No. 84-363, adopted by the Federal Home Loan Bank Board on July 6, 1984.

In testimony whereof, J.J. Finn Secretary to the Federal Home Loan Bank Boad have hereunto caused the Seal of said Board to be affixed and my name subscribed hereto, in the District of Columbia, this 6th day of July, 1984

/s/ JJ. Finn
Secretary to the
Federal Home Loan Bank Board

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FEDERAL HOME LOAN BANK BOARD

Acquisition of Windom Federal Savings and Loan Association
No. 84-363
Date: July 6, 1984

Recitals

WHEREAS, the board of directors of Windom Federal Savings and Loan Association, Windom, Minnesota ("Windom"), has adopted, by at least a two-thirds vote of the board, a plan of merger evidenced by a Combination Agreement and Plan of Merger ("Merger Agreement") (a copy of which is in the Minute Exhibit File), pursuant to which Windom will merge with and into United Federal Savings Bank, ("Savings Bank"), a proposed federal stock savings bank; and

WHEREAS, Winstar Corporation, a Minnesota corporation ("Winstar" or "Applicant"), has applied to the Federal Savings and Loan Insurance Corporation ("FSLIC"), pursuant to § 408 of the National Housing Act, as amended, (the "Act"), 12 U.S.C. § 1730 (1982), for prior written approval to acquire control of Windom through the merger of Windom with and into Savings Bank, a proposed federal stock savings bank to be organized pursuant to § 5(p) of the Home Owners' Loan Act of 1933, as amended, ("HOLA"), 12 U.S.C. § 1464(p) (1982), the stock of which is to be purchased and held by Winstar, and the Federal Home Loan Bank Board ("Bank Board"), as operating head of the FSLIC, has considered the Holding Company Application and accompanying materials of Applicant (hereafter referred to as the "Application"); and

WHEREAS, Applicant, as the organizer of Savings Bank, has applied to the Bank Board for approval of the merger of Windom into Savings Bank ("Merger"); and

WHEREAS, The acquisition by Applicant of control of Windom and its successor Savings Bank ("Acquisition") and the Merger are conditioned upon the execution of an Assistance Agreement by and among Winstar, Savings Bank, and the FSLIC, under which the FSLIC will provide certain financial assistance and indemnification to Savings Bank to facilitate the Merger; and

WHEREAS, The Bank Board has considered proposed forms of the following documents: Plan of Organization, Application for Insurance of Accounts, Agreement for Operating Policies, Federal Stock Charter, Bylaws, Stockholders' Consent to Action, Directors' Consent to Action, Directors' Resolutions, Stock Certificate, Combination Agreement and Plan of Merger, Assistance Agreement, Net Worth Maintenance Stipulation, Stock Transfer Stipulation, Stock Issuance Stipulation, Dividend Limitation Stipulation, Stipulation of Affiliate Status, and Stipulation restricting Securities Brokerage Activities; and

WHEREAS, The Bank Board has considered memoranda from its Office of Examinations and Supervision ("S-Memo"), dated June 28, 1984, Office of the Federal Savings and Loan Insurance Corporation ("A-Memo"), dated June 29, 1984, and Office of General Counsel ("L-Memo"), dated July 3, 1984, together with accompanying attachments and exhibits (copies of which memoranda are in the Minute Exhibit File), with respect to Windom:

Review of Record and Proceedings

NOW, THEREFORE, IT IS RESOLVED That the Bank Board has reviewed, and considered the record before it regarding the financial condition of Windom and the proposed Acquisition transaction; and

Exercise of Authority under § 5(p) of the HOLA

RESOLVED FURTHER, That the Bank Board deems and finds that:

(1) Pursuant to approvals given in this resolution for the provision of assistance to facilitate the merger of Windom with Savings Bank, for the purposes of § 5(p) of the HOLA, the FSLIC has contracted to provide assistance to Windom under § 406(f) of the Act; and
(2) Severe financial conditions exist which threaten the stability of Windom, and authorization of the chartering of Savings Bank and the Merger of Windom into Savings Bank is likely to improve the financial condition of Windom; and
(3) The Bank Board may authorize or require the chartering of Savings Bank and the Merger pursuant to § 5(p) of the HOLA; and

Chartering of New Federal Stock Association

RESOLVED FURTHER, That under the authority of § 5(p) of the HOLA, and as part of a plan to prevent the failure of Windom, pursuant to a proposal by the FSLIC, the organization and incorporation of Savings Bank as a new federal stock savings bank, in accordance with the proposed Plan of Organization and attached documents, is hereby approved, *provided* that:

1. Applicant shall authorize the execution of all documents necessary to consummate such transactions in accordance with all applicable statutory and regulatory requirements, and the conditions imposed by this Resolution;
2. Applicant, shall, on or before the effective date of the Merger, submit to the FSLIC an executed Plan of Organization in the form, or substantially in the form, of the proposed Plan of Organization;
3. The issuance and sale of Savings Bank's stock to Winstar in accordance with the terms of the proposed Plan of Organization as executed shall be completed promptly upon the issuance of a Federal Stock Charter to Savings Bank;
4. The stock issued by Savings Bank shall be evidenced by a certificate in the form of the proposed certificate, which is hereby approved, including a statement to the effect that the shares are restricted as to transfer until the expiration of the longer of the proposed Assistance Agreement or three full years following the Merger, except with prior written consent of the FSLIC;
5. Winstar shall, promptly after it has made full payment for Savings Bank's stock, elect Savings Bank's board of directors, and the board of directors shall, promptly after being elected, appoint officers, approve the Merger and execution of the Merger Agreement on behalf of Savings Bank, and approve the execution of an assistance agreement with the FSLIC, and take all other actions necessary to effect the organization of Savings and the Merger;
6. The chief executive officer of the Applicant or other officer authorized to act for the Applicant

shall submit to the Bank Board, on behalf of the Applicant, promptly after completion of the acquisition of Savings Bank's stock, a letter stating that the purchase was made solely for the purpose of investment and not with a view toward resale or distribution; that the Applicant was provided with all material information requested concerning Windom and the Acquisition; that at the time of consummation of the Acquisition no material adverse change had occurred with respect to the business and operations of the Applicant since the date of the financial statements submitted with the Application; that the acquisition was consummated consistent with the pro forma statements of condition filed with the Application, or if any such change has occurred, stating in which respect there has been such a change or inconsistency with such statements of condition; that no expense has been incurred by Applicant in organization that is chargeable to Savings Bank and no such expense will be incurred; and that no funds were accepted for deposit by Savings Bank until organization of Savings Bank was completed in accordance with the Plan of Organization as executed and the terms of this resolution;

7. Savings Bank shall promptly file with the Bank Board a copy of the Plan of Organization on which its President shall have certified to the completion of the steps of organization as described therein;
8. Savings Bank shall promptly file with the Bank Board five copies of its charter and bylaws in the forms herein approved;
9. Savings Bank shall promptly file a Stock Issuance Stipulation with the Bank Board

stipulating that, for the longer of the term of the Assistance Agreement or three full years following the Merger, no voting stock, voting stock options, or warrants for voting stock shall be issued to any person or entity other than Winstar, or a direct or indirect wholly-owned subsidiary thereof, without the prior written approval of the FSLIC; and

10. Savings Bank shall promptly file with the Supervisory Agent an Agreement for Operating Policies in the form submitted to the Bank Board or in substantially similar form; and

Provided further, that if the above conditions are not met:

1. The Federal Stock Charter of Savings Bank shall be cancelled and withdrawn and its corporate existence shall then be terminated;
2. All approvals given under this Resolution and concurrent resolutions shall be cancelled and withdrawn; and
3. The membership of Savings Bank in the Federal Home Loan Bank of Des Moines ("Des Moines Bank") and the insurance of accounts by the FSLIC shall be cancelled and withdrawn by reason of failure to meet a condition; and

The Director, Deputy Director, or Associate Director, Office of the FSLIC, or any person designated in writing by any of the foregoing (hereafter referred to as "Director"), the General Counsel, and the Secretary or an Acting or Assistant Secretary to the Bank Board are authorized and directed to take all necessary and appropriate actions to effect the foregoing provisions of this resolving paragraph of this Resolution; and

Issuance of Forms

RESOLVED FURTHER, That all forms issued after the completion of the organization of Savings Bank evidencing funds on deposit with Savings Bank shall be in the form approved by the Principal or other Supervisory Agent of the Bank Board or the FSLIC, Des Moines, Iowa ("Supervisory Agent"), and shall indicate that Savings Bank is a stock savings bank; and

Issuance of Charter and Bylaws

RESOLVED FURTHER, That a Charter in the form of the proposed Federal Stock Charter is hereby approved and shall be issued to Savings Bank, and the Secretary or an Assistant Secretary may attest and date the Charter, upon the direction of the Office of the General Counsel, and such Charter shall be deemed issued at the time of such dating and attesting by the Secretary or Assistant Secretary; and

RESOLVED FURTHER, That the bylaws of Savings Bank in the form proposed are hereby approved; and

Completion of Organization

RESOLVED FURTHER, That, pursuant to § 552.2-3 of the Federal Regulations, the organization of Savings Bank shall be deemed complete when all actions provided for in paragraphs (A) through (O) of the Plan of Organization have been taken and the Assistance Agreement has been executed on behalf of the FSLIC; and

Membership in the Federal Home Loan Bank and FSLIC Insurance of Accounts

RESOLVED FURTHER, That upon receipt of its Charter, Savings Bank shall be a member of the Des Moines Bank and the Secretary or an Assistant Secretary shall issue a certificate of bank membership to Savings Bank; and

RESOLVED FURTHER, That insurance of accounts of Savings Bank is hereby approved, and the Secretary or an Assistant Secretary is authorized to issue a certificate of insurance to Savings Bank, and the FSLIC admission fee is waived, and the initial premium, if any, shall be paid upon determination by the Director, Office of the FSLIC, *provided* that the proposed Application for Insurance of Accounts and Agreement for Operating Policies are executed by Savings Bank in accordance with the Plan of Organization and returned to the FSLIC; and

Further Actions

RESOLVED FURTHER, That the Director, the General Counsel, and the Secretary or an Acting or Assistant Secretary to the Bank Board are hereby authorized and directed to take all other actions necessary or appropriate to further document or implement the incorporation and organization of Savings Bank, its membership in the Des Moines Bank, its insurance of accounts or any related matter contemplated in this resolution; and

RESOLVED FURTHER, That any documents necessary to the organization of Savings Bank as approved in this Resolution shall be executed in the form or

substantially in the form of the proposed documents presented to the Bank Board, *provided* that the Director, with the concurrence of the Office of Examinations and Supervision, may agree to such changes as do not involve matters of policy, and *provided further* that the final form of any such document has been approved by the Office of General Counsel; and

Supervisory Conversion

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, finds that:

(1) Windom is insolvent in that its assets are less than its obligations to creditors and others, including its members;
(2) The Bank Board has the power to appoint a receiver for the purpose of liquidating Windom;
(3) Upon the liquidation of Windom, accompanied by the payment of insurance on accounts, the members of Windom would have no realizable equity interest in Windom;
(4) Pursuant to this Resolution, the FSLIC has contracted to provide assistance to Windom under section 406 of the Act;
(5) Severe financial conditions exist which threaten the financial condition of Windom, and authorization of the supervisory merger conversion of Windom is likely to improve its financial condition;
(6) Following the merger conversion of Windom, the resulting association will be a viable entity;
(7) The conversion to stock form as part of the supervisory merger of Windom into Savings Bank is part of a supervisory transaction, and

may be and is hereby approved under § 5(i) of the HOLA, 12 U.S.C. § 1464(i) (1982), § 5(p) of the HOLA, 12 U.S.C. § 1464(p) (1982), and § 402(j) of the Act, 12 U.S.C. 1725(j) (1982); and

(8) Pursuant to the exception provisions in § 563b.1(a) and § 563b.20 of the Rules and Regulations for the FSLIC ("Insurance Regulations"), the rules set forth in Part 563b of the Insurance Regulations shall not govern the conversion of Windom; and

Approval of Combination Agreement and Plan of Merger

RESOLVED FURTHER, That the merger of Windom into Savings Bank and the resulting increase in the insurable accounts of Savings Bank are hereby approved pursuant to § 5(p) of the HOLA, §§ 546.2 and 552.13 of the Federal Regulations, and § 563.22 of the Insurance Regulations, and notwithstanding any provision of §§ 546.2 or 552.13 of the Federal Regulations and § 563.22 of the Insurance Regulations, (i) Savings Bank may enter into a Plan of Merger in the form or substantially in the form of the proposed Merger Agreement with Windom, (ii) the application for approval of the Merger is determined to be complete and in acceptable form; and (iii) the Director, with the concurrence of the Office of the General Counsel, may waive any provisions of §§ 546.2 or 552.13 of the Federal Regulations and § 563.22 of the Insurance Regulations not otherwise waived in this Resolution as the Director determines appropriate or necessary, *provided* that:

(1) Windom and Savings Bank shall have executed a Merger Agreement in the form or substantially in the form of the proposed Merger

Agreement, and the Office of the General Counsel shall have determined that such action has been taken;

(2) On or before the Effective Date of Merger, Applicant and Savings Bank shall file with the Bank Board a certification, in form and substance satisfactory to the Office of General Counsel, stating that none of the directors of the Applicant, Savings Bank, or Windom have received or will receive any payment, compensation, or inducement in connection with the Merger; and

(3) Upon consummation of the Merger, Applicant and Savings Bank shall submit a certification to the FSLIC and the Supervisory Agent stating the date on which the Merger became effective; and

RESOLVED FURTHER, That the Bank Board deems it necessary, in order to avert the imminent failure of Windom, to waive or deem inapplicable certain provisions of § 552.13 of the Federal Regulations, and hereby deems inapplicable and waives paragraphs (f), (i), (l) and (m) of § 552.13; and

RESOLVED FURTHER, That the Bank Board deems the Merger Agreement between Windom and Savings Bank and the application for approval of the merger to be in substantial compliance with § 546.2 and paragraphs (g) and (h) of § 552.13 of the Federal Regulations; and

RESOLVED FURTHER, That for purposes of determining its required net worth level under § 563.13(b) of the Insurance Regulations following the Merger, Savings Bank shall be treated as an institution insured for 20 years or longer; and

Accounting

RESOLVED FURTHER, That in accounting for the Merger and the acquisition of assets and liabilities of Windom by Savings Bank, Savings Bank and the Applicant shall use generally accepted accounting principles prevailing in the savings and loan industry, as accepted, modified, clarified or interpreted by applicable regulations of the Bank Board and the FSLIC; and

RESOLVED FURTHER, That Savings Bank shall furnish an analysis, accompanied by a concurring opinion from its independent public accountants, satisfactory to the Supervisory Agent and to the Office of Examinations and Supervision, which (i) specifically describes as of the closing date, any intangible assets, including goodwill or the discounts and premiums arising from the acquisition to be recorded on Savings Bank's consolidated books; and (ii) substantiates the reasonableness and conformity with regulatory requirements of the amounts attributed to intangible assets, including goodwill, and the discounts and premiums and the related amortization periods and methods; and

Prevention of Failure

RESOLVED FURTHER, That the Bank Board finds that approval of the Merger is necessary to prevent the probable failure of windom; and

RESOLVED FURTHER, That the Bank Board finds that the Merger is instituted for supervisory reasons; and

Holding Company Approval

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, has considered the financial and managerial resources and future prospects of the Applicant, Savings Bank, and Windom and the convenience and needs of the communities served by Windom and to be served by Savings Bank; and

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, finds that the acquisition of control of Savings Bank proposed in the Application would not be detrimental to Savings Bank or Windom or to the insurance risk of the FSLIC; and

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, determines that the proposed acquisition of control of Windom by the Applicant by reason of the Supervisory Merger meets the approval standards of § 408(e)(1)(B) and (e)(2) of the Act, 12 U.S.C. § 1730a(e)(1)(B) and (e)(2) (1982); and

RESOLVED FURTHER, That, the Bank Board, as operating head of the FSLIC, hereby approves and authorizes, pursuant to §§ 408(e)(1)(B) of the Act, 12 U.S.C. §§ 1730a(e)(1)(B) (1982), the acquisition by Applicant of control of Windom, *provided* that:

(1) Upon the chartering of Savings Bank, Winstar causes Savings Bank to execute the Merger Agreement executed by Windom;
(2) Upon consummation of the Acquisition, the Applicant shall file with the FSLIC and the

Supervisory Agent a Net Worth Maintenance Stipulation, pursuant to which (A) the Applicant, stipulates to the FSLIC that, so long as it controls Savings Bank, as the term "control" is defined by § 408 of the Act, and § 583.26 of the Regulations for Savings and Loan Holding Companies ("Holding Company Regulations"), it shall cause the net worth of Savings Bank to be maintained at a level consistent with that required by § 563.13 of the Insurance Regulations, as now or hereafter in effect, for institutions insured 20 years or longer, without regard to any net worth certificate assistance for which Savings Bank may qualify under § 406(f)(5) of the Act, 12 U.S.C. § 1729(f)(5) (1982), and it shall, as necessary, cause sufficient cash to be contributed to Savings Bank to effect compliance with such requirement, and (B) the Applicant and Savings Bank waive any claim to assistance under § 406(f)(5) of the Act;

(3) Upon consummation of the Acquisition, Winstar shall file with the FSLIC and the Supervisory Agent a Stock Transfer Stipulation, pursuant to which Winstar stipulates to the FSLIC that for the longer of the term of the Assistance Agreement or three full years following the Merger it will maintain control of Savings Bank, as control is defined in § 408(e) of the Act and § 583.26 of the Holding Company Regulations and will not sell, transfer, pledge or otherwise dispose of, stock of Savings Bank except for the security interest granted to Northwest Bank, Minneapolis, Minnesota, for its $1,750,000.00 loan to Winstar for its initial purchase of Savings Bank's stock;

(4) Upon consummation of the Acquisition, the Applicant shall file a Dividend Limitation Stipulation with the Supervisory Agent pursuant to which the Applicant stipulates that, so long as the Applicant directly or indirectly controls Savings Bank, as control is defined by § 583.26 of the Holding Company Regulations, Savings Bank shall not declare or pay a dividend in any fiscal year that exceeds 50% of Savings Bank's net income, as defined in § 563c.12 of the Insurance Regulations, for the fiscal year, as reflected on Savings Bank's quarterly or other financial reports to the Bank Board, without the prior written approval of the Supervisory Agent and the concurrence of the Director of the Office of Examinations and Supervision, provided that any dividends permitted under this limitation may be deferred and paid in a subsequent year, but in no event may dividends be paid that would reduce Savings Bank's net worth below the level required under § 563.13(b) of the Insurance Regulations for institutions insured 20 years or longer;

(5) Upon consummation of the Acquisition, the Applicant and its shareholders shall file a Stipulation of Affiliate Status in the form submitted to the Bank Board or in substantially similar form, with the Supervisory Agent, pursuant to which the Applicant and its shareholders stipulate that they jointly and severally control Savings Bank and further stipulate that, to the extent that certain entities are not otherwise included within the definition of affiliated person in § 561.29 of the Insurance Regulations, or within the definition of affiliate

in § 583.15 of the Holding Company Regulations, such entities shall be deemed to be affiliates for purposes of compliance with the regulations of the Bank Board and the FSLIC regulating conflicts of interest and transactions with affiliates;

(6) Upon consummation of the Acquisition, the Applicant shall file with the Supervisory Agent, as an addendum to its business plan, a Stipulation Restricting Securities Brokerage Activities in the form submitted to the Bank Board or in substantially similar form, pursuant to which the Applicant stipulates to restrictions on the conduct of any securities brokerage business by the Applicant and its subsidiaries; and

(7) Not later than 30 days from the Closing Date, counsel to Savings Bank shall submit a certification to the Supervisory Agent stating the effective date of the Acquisition and that the Acquisition has been consummated in accordance with the provisions of all applicable laws and regulations, the Application, and this Resolution; and

RESOLVED FURTHER, That the Bank Board finds that approval of the Acquisition by Applicant of control of Windom is necessary to prevent the probable failure of Windom; and

RESOLVED FURTHER, That the Bank Board finds that the Acquisition by Applicant of control of Windom is instituted for supervisory reasons; and

RESOLVED FURTHER, That the Director be and hereby is authorized and directed to take such steps

or actions as may be desirable or necessary to the completion of the Acquisition on the terms approved by this Resolution; and

RESOLVED FURTHER, That any of the stipulations required to be submitted by the Applicant and Savings Bank in connection with the Acquisition of control of Windom, and any other documents necessary to effect such Acquisition shall be in the form or substantially in the form of the proposed documents presented to the Bank Board, *provided* that the Director, with the concurrence of the Office of Examinations and Supervision, may agree to such changes as do not involve matters of policy, and *provided further* that the final forms of such documents have been approved by the Office of General Counsel; and

Assistance Agreement

RESOLVED FURTHER, That the Bank Board, as operating head of the FSLIC, hereby determines, pursuant to § 406(f)(1-4) of the Act, 12 U.S.C. § 1729(f)(1-4) (1982), that (1) financial assistance by the FSLIC is necessary to prevent the default of Windom and to facilitate the Merger with Savings Bank, and (2) the amount of such assistance, to be provided in accordance with the terms and conditions of the proposed Assistance Agreement, would not exceed the cost reasonably necessary to save the cost of liquidating Windom through a receivership accompanied by the payment of insurance of accounts; and

RESOLVED FURTHER, That the proposed Assistance Agreement is hereby approved, and the Director, or such persons as the Director may designate,

be and hereby are authorized to execute on behalf of the FSLIC an agreement in the form or substantially in the form of the proposed Assistance Agreement, *provided* that the final form of such Agreement has been approved by the Office of the General Counsel; and

RESOLVED FURTHER, That the Director is authorized to take such further actions as may be necessary or appropriate to exercise the rights and fulfill the obligations of the FSLIC contained in the Assistance Agreement; and

Tax Certification

RESOLVED FURTHER, That the Bank Board hereby finds and certifies that the ground set forth in 12 U.S.C. § 1464(d)(6)(A)(i) (1982) exists with respect to Windom in that Windom is insolvent in that the assets of Windom are less than its obligations to its creditors and others, including its members; and

RESOLVED FURTHER, That the Secretary or any Assistant Secretary is hereby authorized and directed to send to Savings Bank a letter certifying on behalf of the Bank Board the determination made in the immediately preceding resolving paragraph, and to provide copies of such letter to any agency of the United States upon request; and

Bank Stock and Membership

RESOLVED FURTHER, That the transfer of the stock of Windom in the Des Moines Bank to Savings Bank is approved as of the effective date of the Merger; and

RESOLVED FURTHER, That the cessation of the membership of Windom in the Des Moines Bank be noted by reason of the Merger hereinbefore approved, effective as of the effective date of the Merger; and

Certificate of Insurance

RESOLVED FURTHER, That the Secretary or an Assistant Secretary hereby is directed to cancel the certificate of insurance of Windom upon its surrender to the FSLIC; and

Branch Offices

RESOLVED FURTHER, The maintenance of the home and branch offices of Windom as home and branch offices of Savings Bank subsequent to the Merger is hereby approved; and

Forebearance

RESOLVED FURTHER, That the Bank Board has considered certain regulatory forbearance requested by the Applicant and contained in a proposed letter (a copy of which is in the Minute Exhibit File); and

RESOLVED FURTHER, That the Secretary or any Assistant Secretary is authorized and hereby directed to send Savings Bank a letter in the form considered by the Bank Board; and

Effective Date of Merger

RESOLVED FURTHER, That the effective date of the Merger of Windom with Savings Bank shall be 11:59 p.m., local time, on July 10, 1984, or such other date and time as the Supervisory Agent shall

determine, provided that such date shall be no later than July 31, 1984.

By the Federal Home Loan Bank Board

J.J. Finn
Secretary

FEDERAL HOME LOAN BANK BOARD

Delegation of Authority
No. 84-364
Date: July 6, 1984

WHEREAS, The Director, Deputy Director, or an Associate Director, Office of the Federal Savings and Loan Insurance Corporation ("FSLIC"), or such persons as any of them may designate have been authorized by Resolution No. 84-363, dated July 6, 1984, to execute on behalf of the FSLIC in its corporate capacity an Assistance Agreement with Winstar Corporation, Roseville, Minnesota and United Federal Savings Bank, Windom, Minnesota; and

WHEREAS, The Assistance Agreement imposes certain rights, duties, and obligations upon the FSLIC in its corporate capacity that do not require basic determinations of policy; and

WHEREAS, In the administration of such agreements, and of any rights or obligations of the FSLIC under them, it may be necessary or desirable that the FSLIC in its corporate capacity contract for legal, auditing, or other services:

NOW THEREFORE, IT IS RESOLVED, That the Federal Home Loan Bank Board ("Bank Board"), as operating head of the FSLIC, determines that such expenditures of the FSLIC in its corporate capacity pursuant to the Assistance Agreement are necessary, made under the National Housing Act, and shall be incurred, allowed, and paid under the provisions of the fourth sentence of § 402(c)(5) of the National

Housing Act, as amended, 12 U.S.C. § 1725(c)(5) (1982), without regard to the provisions of any other law governing the expenditure of public funds; and

RESOLVED FURTHER, That effective upon the execution of the Assistance Agreement, the Director or Deputy Director, Office of the FSLIC, or such person as either of them may designate is hereby authorized and directed to take such actions as may be desirable or necessary to fulfill the rights, duties, and obligations of the FSLIC in its corporate capacity under such Agreement and to incur, allow, and pay all expenditures in fulfillment of such rights, duties, and obligations, pursuant to the fourth sentence of § 402(c)(5) of the National Housing Act, as amended, 12 U.S.C. § 1725(c)(5) (1982), including, but not limited to:

(1) The payment of amounts required by such Agreement;
(2) Contracting for legal, accounting or other services;
(3) The assignment and pursuit of claims; and

RESOLVED FURTHER, That the General Counsel may also exercise the authority conferred pursuant to the preceding paragraph with respect to contracting on behalf of the FSLIC for legal or other related services needed to implement such agreements.

RESOLVED FURTHER, That the Director or Deputy Director, Office of the FSLIC, or a person designated by either is authorized and directed to take all other actions necessary and appropriate to exercise the rights, and fulfill the duties and obligations of the FSLIC in the administration of the agreements.

By the Federal Home Loan Bank Board

J. J. Finn
Secretary

ASSISTANCE AGREEMENT
BETWEEN
THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
AND
WINSTAR CORPORATION, ROSEVILLE, MINNESOTA
AND
UNITED FEDERAL SAVINGS BANK WINDOM, MINNESOTA
Dated July 12, 1984

SUMMARY OF SUBSTANTIVE PROVISIONS

Assistance Provided	Section in Agreement
Cash contribution of $1,950,000 plus an amount equal to aggregate negative net worth of the Merging Association $ _____ as of the Effective Date.	§ 4
Indemnification for undisclosed liabilities, unreserved for claims against the Merging Association, and litigation challenging the merger.	§ 5

ASSISTANCE AGREEMENT
BETWEEN
THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, and WINSTAR CORPORATION, ROSEVILLE, MINNESOTA and UNITED FEDERAL SAVINGS BANK, WINDOM, MINNESOTA
dated July 12, 1984

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ASSISTANCE AGREEMENT

THIS ASSISTANCE AGREEMENT ("Agreement"), dated July 12, 1984, is entered into by and between the WINSTAR CORPORATION, Roseville, Minnesota, a Minnesota corporation ("WINSTAR"), UNITED FEDERAL SAVINGS BANK, Windom, Minnesota, a de novo federal stock savings bank, which will be a wholly-owned subsidiary of WINSTAR ("RESULTING ASSOCIATION"), and the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a corporate instrumentality and agency of the United States ("CORPORATION").

RECITALS

A. The CORPORATION insures the accounts of WINDOM FEDERAL SAVINGS AND LOAN ASSOCIATION, Windom, Minnesota ("MERGING ASSOCIATION"), and will insure the accounts of the RESULTING ASSOCIATION, in accordance with § 403 of the National Housing Act, as amended, 12 U.S.C. § 1725 (1982).

B. The Federal Home Loan Bank Board ("Bank Board"), in Resolution No. 84-363, dated July 6, 1984, approved (1) the chartering of the RESULTING ASSOCIATION as a de novo federal stock savings bank, the accounts of which will be insured by the CORPORATION, (2) a proposal by WINSTAR to acquire the MERGING ASSOCIATION by means of the merger of the MERGING ASSOCIATION into the RESULTING ASSOCIATION ("Merger"), (3) WINSTAR's acquisition of the RESULTING ASSOCIATION's capital stock, which WINSTAR will purchase for two million dollars, and (4) the MERGING ASSOCIATION's supervisory conversion to

stock form and merger with the RESULTING ASSOCIATION.

C. The MERGING ASSOCIATION has entered into a Combination Agreement and Plan of Merger ("Merger Agreement") with WINSTAR, pursuant to which WINSTAR has agreed to cause the RESULTING ASSOCIATION to consummate the Merger pursuant to such agreement, which also provides that the RESULTING ASSOCIATION will succeed to all rights, obligations, duties, and liabilities of the MERGING ASSOCIATION, and all assets and property of every kind and character belonging to the MERGING ASSOCIATION will be vested in and become the property of the RESULTING ASSOCIATION.

D. A condition precedent to the obligation of the parties to consummate such merger is that the CORPORATION, the RESULTING ASSOCIATION, and WINSTAR enter into an agreement in the form of this Agreement, which will provide financial assistance and indemnification to the RESULTING ASSOCIATION, in order to facilitate the Merger as approved by the Bank Board.

E. The CORPORATION has decided, pursuant to § 406(f) of the National Housing Act, as amended, 12 U.S.C. § 1729(f) (1982), to provide financial assistance and indemnification as set forth in this Agreement, having determined that the MERGING ASSOCIATION is in danger of default and that the amount of such assistance and indemnification would be less than the losses the CORPORATION would sustain upon the liquidation of the MERGING ASSOCIATION through a receivership accompanied by the payment of insurance of accounts.

F. In consideration of the mutual promises contained in this Agreement, the parties enter into the following agreement.

AGREEMENT

§1 *Definitions.* For the purpose of this Agreement the following terms have the indicated meanings:

(a) *"Bank Board"*: The Federal Home Loan Bank Board.

(b) *"Claim"*: Any claim, demand, cause of action, or judgment.

(c) *"Control"* and *"Controls"*: These terms have the meaning indicated in § 583.26 of the Regulations for Savings and Loan Holding Companies.

(d) *"Effective Date"*: The date and time at which the Merger of the MERGING ASSOCIATION into the RESULTING ASSOCIATION becomes effective pursuant to the terms of the Merger Agreement and applicable law.

(e) *"Financial Report"*: The Quarterly Report required of insured institutions by the Bank Board or any other periodic report required of insured institutions.

(f) *"Insurance Regulations"*: The Rules and Regulations for the CORPORATION.

(g) *Liquidation"*: The release, compromise, satisfaction, settlement, reduction to judgment, or assignment to other than the CORPORATION of any Claim.

(h) *"Management Standard"*: The standard of prudent business practice generally employed by financial institutions in Minnesota in administering their assets and liabilities.

(i) *"Merger"*: The supervisory merger of the MERGING ASSOCIATION into the RESULTING ASSOCIATION under the Merger Agreement.

(j) *"Merging Association Claim"*: Any unrealized Claim of the MERGING ASSOCIATION or the RESULTING ASSOCIATION, as its successor,

against (1) a person serving on or prior to the Effective Date as a director, officer, employee, or agent of the MERGING ASSOCIATION or any of its subsidiaries, provided that an action or inaction of such person on or prior to the Effective Date gave rise to such Claim; (2) an insurer who may be liable for the indemnification of the loss caused by the action or inaction of such person; (3) any administrator, executor, personal representative, heir, or assign of any such person; or (4) any other person or persons, partnership, corporation, or legal entity ("third party"), and any administrator, executor, personal representative, heir, or assign of such third party, provided that the Claim against such third party is related to a Claim against a party referred to under (1), (2), or (3) above.

(k) *"Net Proceeds Received"*: As used in reference to the amount received upon the Liquidation of a Claim, the amount computed by deducting from the gross proceeds received all reasonable expenses in the form of payments to third parties, incurred or paid by the RESULTING ASSOCIATION in connection with such Liquidation, provided such expenses have not been reimbursed otherwise. Such "reasonable expenses" may include, without being limited to, attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses, and such other actual costs that are directly related to the Liquidation of the Claim.

(l) *"Net Worth"*: Regulatory Net Worth as defined in § 561.13 of the Insurance Regulations and as computed in accordance with the accounting principles required by this Agreement.

(m) *"Quarter"*: A calendar quarter, provided that the first Quarter during the term of this Agreement shall be deemed to include the period, if any, from the

Effective Date to the last day preceding the first day of the first full calendar quarter following the Effective Date.

§ 2 *Conditions.*

(a) The obligations of the parties are subject to the Merger becoming effective no later than 30 days after the date of this Agreement, unless such date is extended in writing by the Principal or other Supervisory Agent of the Bank Board, Des Moines, Iowa ("Supervisory Agent").

(b) The CORPORATION's obligations under this Agreement are also conditioned upon receipt of the following:

(1) An opinion from independent counsel for the RESULTING ASSOCIATION, in form and substance satisfactory to the CORPORATION and its counsel, to the effect that:

(A) The Merger has been duly authorized by the directors of the MERGING ASSOCIATION, WINSTAR, and the RESULTING ASSOCIATION and effected in compliance with the Charter and Bylaws of the MERGING ASSOCIATION, WINSTAR, and the RESULTING ASSOCIATION and with applicable law;

(B) This Agreement has been duly authorized, executed, and delivered, and constitutes a valid and binding obligation of WINSTAR and the RESULTING ASSOCIATION, enforceable in accordance with its terms;

(2) A certified copy of the corporate resolutions of WINSTAR and the RESULTING ASSOCIATION authorizing execution and delivery of the Merger Agreement and this Agreement;

(3) A certified copy of the corporate resolution of the MERGING ASSOCIATION authorizing execution and delivery of the Merger Agreement;

(4) Certification by the RESULTING ASSOCIATION's Secretary, after completion of the sale of its capital stock, stating that the capital stock has been sold, the price at which it was sold, the date of the sale, and the net proceeds received;

(5) A copy of the RESULTING ASSOCIATION's stock certificate, which shall include a statement to the effect that the shares are restricted as to transfer for a period of three years from the date of issuance, except with the prior written consent of the CORPORATION;

(6) An opinion of the RESULTING ASSOCIATION's independent counsel that all applicable securities law requirements have been met in connection with the sale of the RESULTING ASSOCIATION's stock.

(c) The CORPORATION's obligations under this Agreement are further conditioned upon WINSTAR's:

(1) Maintaining, for so long as WINSTAR directly or indirectly controls the RESULTING ASSOCIATION, but in no event for less than three years, the RESULTING ASSOCIATION's Net Worth at an amount not less than the minimum amount prescribed in § 563.13 of the Insurance Regulations for institutions insured twenty years or longer;

(2) Causing the RESULTING ASSOCIATION to perform its obligations under this Agreement; and

(3) Guaranteeing the satisfaction of any obligation the RESULTING ASSOCIATION assumes under this Agreement.

§ 3 *Audit.* As soon as is practicable after the Effective Date, the CORPORATION, at its own expense but with the assistance of the RESULTING

ASSOCIATION's personnel, whose salaries and expenses shall be paid by the RESULTING ASSOCIATION without reimbursement from the CORPORATION, shall prepare an audit of the MERGING ASSOCIATION as of the Effective Date in accordance with generally accepted auditing standards, as modified by the CORPORATION. The scope of the audit shall be limited to that which the CORPORATION determines to be necessary to implement this Agreement and shall not include a revaluation of the MERGING ASSOCIATION's assets, except that valuation reserves established by the MERGING ASSOCIATION since June 30, 1983, other than those established at the request of the Supervisory Agent, shall be revalued if the CORPORATION requests such revaluation. Upon its completion and approval by the CORPORATION, a copy of the audit, which shall be prepared in such form as the CORPORATION shall determine, shall be furnished to the RESULTING ASSOCIATION.

§ 4 *Contributions.*

(a) *Cash Contribution.* The CORPORATION shall make a cash contribution to the RESULTING ASSOCIATION equal to $1,950,000 plus a sum equal to the MERGING ASSOCIATION's aggregate negative Net Worth as of the Effective Date ("Net Worth Contribution") as follows:

(1) As soon as possible following the Effective Date, but in any event within ten business days after the Effective Date, the CORPORATION shall transmit to the RESULTING ASSOCIATION a cash contribution equal to (A) $1,950,000, plus (B) a sum equal to the CORPORATION's estimate of the Net Worth Contribution, which estimate will be the sum of negative net worth shown on the most recent Financial Report for the MERGING ASSOCIATION

filed with the Bank Board prior to the Effective Date, plus the estimated loss for the period following that of the last filed Financial Report, calculated by multiplying the average per diem loss, determined from the last Financial Report filed before the Effective Date, by the number of days between the last day covered by such Financial Report and the Effective Date ("Estimated Net Worth Contribution").

(2) The amount of the Estimated Net Worth Contribution shall be adjusted following the Audit required by § 3 of this Agreement and, to the extent that the MERGING ASSOCIATION's audited Net Worth is greater than the Estimated Net Worth Contribution, the CORPORATION shall pay a cash sum equal to the amount of such difference to the RESULTING ASSOCIATION and, to the extent the audited Net Worth is lesser than the Estimated Net Worth Contribution, the RESULTING ASSOCIATION shall pay a cash sum equal to such difference to the CORPORATION. Any adjustment payment due from the CORPORATION to the RESULTING ASSOCIATION, as a result of the audit, shall be remitted by the CORPORATION within ten business days of acceptance by the CORPORATION of the final audit report. Further, the CORPORATION will utilize its best efforts to obtain, review and accept the final audit report within 120 days of the Effective Date. Any adjustment payment due to the CORPORATION from the RESULTING ASSOCIATION, as a result of the audit, shall be remitted by the RESULTING ASSOCIATION within ten business days after notification by the CORPORATION that such a payment is due.

For purposes of periodic financial reports to the Bank Board, all cash contributions, other than Net

Worth Contributions, made under this § 4(a) shall be directly credited to the RESULTING ASSOCIATION's net worth; provided, however, that such accounting treatment of the contributions made under this § 4(a) is not hereby authorized for any filings or other reports the RESULTING ASSOCIATION may make to the Bank Board or others, including, but not limited to, financial statements required to be prepared in accordance with generally accepted accounting principles as in effect at the time of their submission. In the event that a court of competent jurisdiction directs the RESULTING ASSOCIATION to divest itself of the assets and liabilities of the MERGING ASSOCIATION, the cash contributions made pursuant to this § 4(a) shall be repaid to the CORPORATION by the RESULTING ASSOCIATION.

(b) *Indemnification Contributions.* Within 30 days after receipt of each of the RESULTING ASSOCIATION's quarterly reports required pursuant to § 8(a) of this Agreement, and within 90 days after receipt of the final accounting required pursuant to § 8(b) of this Agreement, the CORPORATION shall contribute to the RESULTING ASSOCIATION any amounts set forth on such report that are owed to the RESULTING ASSOCIATION pursuant to §§ 5 and 6.

(c) *Assignment Contributions.* In the event that the CORPORATION exercises its right to the assignment of a Merging Association Claim pursuant to § 6(c), the amount of any payment made by the CORPORATION in excess of the fair market value of such Claim shall be deemed to be a contribution by the CORPORATION. Fair market value may be determined by agreement of the CORPORATION and the RESULTING ASSOCIATION or by an

appraisal by an independent appraiser approved by the CORPORATION, the cost of which appraisal shall be paid by the CORPORATION.

(d) *Adjustments.* Any contribution or payment by the CORPORATION or any accounting or report furnished by the RESULTING ASSOCIATION under this Agreement shall be subject to adjustment if it subsequently is determined that such contribution, payment, accounting, or report was based upon error or was not computed in accordance with the accounting principles prescribed by this Agreement.

§ 5 *Indemnification for Undisclosed Liabilities, Claims Against the MERGING ASSOCIATION, and Litigation Challenging the Merger.*

(a) *Indemnifications.* To the extent not otherwise reimbursed or reimbursable by the CORPORATION or under any insurance policy, bond or other provision for funding, provided that the RESULTING ASSOCIATION complies with the covenants set forth in § 9, the CORPORATION will indemnify the RESULTING ASSOCIATION for, and pay as provided in § 4(b), the amounts paid by the RESULTING ASSOCIATION to satisfy, settle, or compromise the following liabilities, Claims, and litigation and the reasonable costs and expenses of related litigation, including attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses, and such other actual costs, including consideration by the CORPORATION of the payment of actual out of pocket expenses of employees of the RESULTING ASSOCIATION, as may be incurred in connection with such satisfaction, settlement or compromise:

(1) *Undisclosed Liabilities.* Any liability of the MERGING ASSOCIATION or any subsidiary corporation that (A) was not disclosed in or reflected on the MERGING ASSOCIATION's or a subsidiary

corporation's books and records prior to the Effective Date and (B) under generally accepted accounting principles as of the Effective Date and consistently applied, is of the type that should have been so disclosed or reflected; provided that for the purposes of this § 5(a)(1), the term "liability" shall not be construed to include any inadequacy in or the lack of a valuation allowance or specific reserve;

(2) *Unreserved for Claims.* Any Claim against the MERGING ASSOCIATION or any subsidiary corporation, or the RESULTING ASSOCIATION as the successor to the MERGING ASSOCIATION, based upon an action or failure to act of the MERGING ASSOCIATION or any subsidiary corporation prior to the Effective Date, whether filed before or after such date, to the extent that such Claim (A) was not adequately reserved for or provision made for its payment on the MERGING ASSOCIATION's or a subsidiary corporation's books and records prior to the Effective Date, and (B) is not fully reimbursed or reimbursable under any insurance policy, bond, or other provision for funding; and

(3) *Challenges to the Merger.* Except for an action by the RESULTING ASSOCIATION, any litigation brought within a period of one year following the Effective Date to challenge or set aside the Merger or this Agreement in which an essential element is a claim that an action or failure to act by the Bank Board or the CORPORATION was not in accordance with the Bank Board's or the CORPORATION's enabling legislation and, in the event that a court of competent jurisdiction directs the RESULTING ASSOCIATION to divest itself of the assets or liabilities of the MERGING ASSOCIATION, the reasonable costs and expenses of such divestiture, provided that such damages are directly attributable

to such action or failure to act by the Bank Board or the CORPORATION.

(b) *Pursuit of Matters.* The RESULTING ASSOCIATION shall use its best efforts to reduce or minimize the CORPORATION's indemnity payments under this § 5 by the pursuit of counterclaims, offsets, insurance settlements, and Claims related to the liabilities indemnified for and shall promptly notify the CORPORATION of any evidence it discovers indicating a basis for such pursuit. The CORPORATION shall indemnify the RESULTING ASSOCIATION for all reasonable costs and expenses related to such pursuit, including, but not limited to, attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses, and such other actual costs as may be incurred by the RESULTING ASSOCIATION in complying with this § 5(b), provided that the RESULTING ASSOCIATION complies with the covenants set forth in § 9. The CORPORATION will consider payment of actual out of pocket expenses of employees of the RESULTING ASSOCIATION when incurred in the pursuit of counterclaims, offsets, insurance settlements and claims. All sums recovered from such related counterclaims, offsets, insurance settlements, and related Claims shall be paid over to the CORPORATION to the extent that the CORPORATION has made contributions pursuant to this Agreement.

(c) *Payments as Contributions.* All payments made by the CORPORATION to the RESULTING ASSOCIATION under this § 5 shall be considered contributions under this Agreement.

(d) *Limitations.* The CORPORATION's aggregate contributions with respect to the liabilities of a subsidiary corporation under § 5(a)(1) of this Agreement and Claims against subsidiary corporations

under § 5(a)(2) shall be limited to the amount of the MERGING ASSOCIATION's investment in that subsidiary corporation.

§ 6 *Merging Association Claims.*

(a) The RESULTING ASSOCIATION shall use its best efforts in pursuing and filing actions on all practicably recoverable Merging Association Claims which accrue to the RESULTING ASSOCIATION as successor in interest to the MERGING ASSOCIATION, whether discovered before or after the Effective Date.

(b) Provided that the RESULTING ASSOCIATION complies with the covenants set forth in § 9, the CORPORATION shall indemnify the RESULTING ASSOCIATION for the reasonable costs and expenses incurred by it in connection with the prosecution of Merging Association Claims, including, but not limited to, attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses, and such other actual costs as may be incurred in connection with such prosecution, but only to the extent that such costs and expenses are not otherwise reimbursed or reimbursable. The CORPORATION will consider payment of reasonable actual out of pocket expenses of employees of the RESULTING ASSOCIATION when incurred in the prosecution of Merging Association claims. Any amount paid by the CORPORATION pursuant to this subsection shall be considered to be a contribution by the CORPORATION to the RESULTING ASSOCIATION.

(c) At any time during the term of this Agreement and until 90 days after the date on which this Agreement terminates, the CORPORATION shall have the right, upon its request, to obtain from the RESULTING ASSOCIATION an assignment of

any Merging Association Claim. If a Merging Association Claim had a value reflected on the books of the MERGING ASSOCIATION immediately prior to the Effective Date, the CORPORATION shall pay for such assignment that value, as adjusted or determined in accordance with the accounting principles as required by this Agreement, within 10 business days after the assignment is completed. In order to facilitate the assignment of a Merging Association Claim, the RESULTING ASSOCIATION shall, at the CORPORATION's request:

(1) Execute and deliver such instruments of assignment or transfer and make endorsements in such form and manner, and at such time, as the CORPORATION shall require; and

(2) Execute and deliver all other instruments that the RESULTING ASSOCIATION possesses and the CORPORATION deems necessary or requisite to complete such assignments or transfers.

(d) If the RESULTING ASSOCIATION has recovered on a Merging Association Claim, the Net Proceeds Received upon the Liquidation of such Merging Association Claim in excess of the value, if any, of such claim reflected on the books of the MERGING ASSOCIATION prior to the Effective Date shall be paid over to the CORPORATION to the extent that it has made contributions pursuant to this Agreement.

(e) If the CORPORATION has recovered on a Merging Association Claim that was assigned to the CORPORATION, the Net Proceeds Received upon the Liquidation of such Claim shall be retained by the CORPORATION to the extent of the amount, if any, paid by the CORPORATION for the assignment of such Claim and to the extent of any other contributions made pursuant to this Agreement.

(f) Any recoveries on a Merging Association Claim exceeding the amount to be retained by or reimbursed to the CORPORATION pursuant to § 6(d) or § 6(e) shall be paid to or retained by the RESULTING ASSOCIATION.

(g) The RESULTING ASSOCIATION shall promptly notify the CORPORATION of any evidence that it discovers indicating a basis for a Merging Association Claim.

§ 7 *Tax Benefits.*

Any federal or state income tax deduction, credit, loss carryovers, or other tax benefit, which now or hereafter inures to the benefit of the RESULTING ASSOCIATION or WINSTAR as a result of this Merger, may be retained by the RESULTING ASSOCIATION or WINSTAR respectively. However, should the RESULTING ASSOCIATION or WINSTAR receive no tax deductions, credits, loss carryovers, or other benefits or be liable for taxes as a result of the Merger, the CORPORATION has no obligation to indemnify or provide additional contributions to either the RESULTING ASSOCIATION or WINSTAR.

§8 *Reports and Records.*

(a) *Quarterly Reports.* Within 45 days following the end of each Quarter in which the RESULTING ASSOCIATION receives notice of any Claim or liability that may cause a payment by or to the CORPORATION pursuant to §§ 5 or 6, the RESULTING ASSOCIATION shall furnish a report to the CORPORATION, in a format approved by the CORPORATION and supported by such data as may be necessary to verify the reporting, that shall include:

(1) Status reports on such Claims and liabilities;

(2) Payments made by and due from the CORPORATION; and

(3) Payments made by and due from the RESULTING ASSOCIATION.

(b) *Final Accounting.* Within 90 days following the date this Agreement terminates, or such longer time as the CORPORATION may permit, the RESULTING ASSOCIATION shall render to the CORPORATION a final accounting of the matters covered by this Agreement, which accounting may be prepared by the RESULTING ASSOCIATION's staff and shall include such information and be in such form as the CORPORATION shall request.

(c) *Access to Books and Records.* The RESULTING ASSOCIATION and WINSTAR shall make available to the CORPORATION all books, papers, records, and information of any kind relating to any or all matters subject to the provisions of this Agreement, including any material or information in the possession of the RESULTING ASSOCIATION, WINSTAR, or any of their affiliates or subsidiaries.

(d) *Examinations.* The CORPORATION may audit or examine the RESULTING ASSOCIATION and WINSTAR with respect to transactions affecting the implementation of this Agreement at any time or times chosen by the CORPORATION. Such audits shall be conducted by the CORPORATION at its own expense but with the assistance of the RESULTING ASSOCIATION's and WINSTAR's personnel, whose salaries and expenses shall be paid by the RESULTING ASSOCIATION and WINSTAR, respectively, without reimbursement from the CORPORATION.

§ 9 *Covenants of the RESULTING ASSOCIATION.* If the RESULTING ASSOCIATION fails to comply with the following covenants concerning the pursuit of a Merging Association Claim, the defense

of a liability, Claim, or litigation described in § 5(a), or the pursuit of a counterclaim, offset, insurance settlement, or related Claim as required under § 5(b), all such items being referred to collectively in this section as "matters," the CORPORATION may disallow a related filing of the RESULTING ASSOCIATION for indemnification.

(a) *Management Standard.* The RESULTING ASSOCIATION shall use its best efforts to minimize losses and maximize gains and recoveries in dealing with all matters that may be the basis for, or reduce the amount of any indemnification or contribution provided by the CORPORATION under this Agreement. The standard to be applied to determine whether the RESULTING ASSOCIATION uses its best efforts is the Management Standard defined in § 1(g) above.

(b) *Conduct of Litigation.* With respect to all matters described in the introductory paragraph to this § 9, the RESULTING ASSOCIATION shall:

(1) Use its best efforts to keep the CORPORATION fully informed of their status;

(2) Observe the right of the CORPORATION to monitor and direct their defense or prosecution, including the right to direct the RESULTING ASSOCIATION to file a petition to remove an action to the appropriate court or to appeal any determination of any court, provided that the CORPORATION shall bear the cost of removal and of monitoring and directing such defense or prosecution;

(3) Authorize the CORPORATION, upon the CORPORATION's election and at the CORPORATION's expense and with its own attorneys, to defend against, or to prosecute in the name of the MERGING ASSOCIATION, the RESULTING ASSOCIATION, or the CORPORATION, as the case may be,

any such matter and cooperate fully with the CORPORATION in such defense or prosecution, including, but not limited to, the furnishing to the CORPORATION of all applicable books, records, and other information in the possession or within the control of the RESULTING ASSOCIATION, WINSTAR, or any of their affiliates or subsidiaries;

(4) At the request of the CORPORATION, assign to the CORPORATION and subrogate the CORPORATION to any right, title, or interest of the RESULTING ASSOCIATION in any such matter, any defense related to such matter, and the proceeds recovered from such matter, and, in the event of such assignment, cooperate fully with the CORPORATION in the defense or prosecution of any such matter, including, but not limited to, the furnishing to the CORPORATION of all books, records, and other information in the possession or within the control of the RESULTING ASSOCIATION, WINSTAR, or any of their affiliates or subsidiaries; and

(5) Obtain the CORPORATION's written consent before (A) prosecuting any such matter by court action, (B) entering into any binding commitment with respect to the satisfaction, settlement, or compromise of any such matter, or (C) making any payment in connection therewith, unless such commitment or payment is for an amount not in excess of twenty-five thousand dollars ($25,000) or is made pursuant to an adjudication by a court of competent jurisdiction which, with the permission of the CORPORATION, the RESULTING ASSOCIATION has not appealed.

§ 10 *Accounting Principles.* Except as otherwise provided, any computations made for the purposes of this Agreement shall be governed by generally accepted accounting principles as applied on a going

concern basis in the savings and loan industry, except that where such principles conflict with the terms of this Agreement, applicable regulations of the Bank Board or the CORPORATION, or any resolution or action of the Bank Board approving or adopted concurrently with this Agreement, then this Agreement, such regulations, or such resolution or action shall govern. In the case of any ambiguity in the interpretation or construction of any provision of this Agreement, such ambiguity shall be resolved in a manner consistent with such regulations and the Bank Board's resolution or action. If there is a conflict between such regulations and the Bank Board's resolution or action, the Bank Board's resolution or action shall govern. For the purposes of this section, the governing regulations and the accounting principles shall be those in effect on the Effective Date or as subsequently clarified, interpreted, or amended by the Bank Board or the Financial Accounting Standards Board ("FASB"), respectively, or any successor organization to either. If there is a conflict between what is required by the FASB and what is required by the Bank Board, the Bank Board's interpretation and requirements shall govern.

§ 11 *Representations and Warranties.* All representations and warranties made to WINSTAR or the RESULTING ASSOCIATION in the Merger Agreement or otherwise made to WINSTAR or the RESULTING ASSOCIATION in connection with the Merger shall also be deemed to have been made to, and shall inure to the benefit of, the CORPORATION. The CORPORATION shall not, however, have the right to terminate or rescind this Agreement because of any breach of any such warranty or representation without the written consent of the

RESULTING ASSOCIATION and shall not assert against the RESULTING ASSOCIATION any Claim or right arising from the breach of such representations and warranties by the MERGING ASSOCIATION or its officers, directors, or employees.

§ 12 *Notices.*

(a) Any notice or other communication required or permitted under this Agreement, unless otherwise specifically provided for, shall be deemed given if sent by first class mail, postage prepaid, to a party at its address set forth below or at such other address as the party shall furnish in writing:

UNITED FEDERAL SAVINGS BANK
c/o Rosewood Office Plaza
Suite 300 South
1711 West County Road B
Roseville, Minnesota 55113

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION
Attn: Director, Financial Assistance Division
1700 G Street, N.W.
Washington, D.C. 20552

(b) Unless otherwise specifically provided for, if this Agreement requires that notice be given within a certain period of time, notice shall be deemed given as of the date of posting.

§ 13 *Termination of Agreement.*

(a) Except as otherwise specifically provided in this Agreement, this Agreement shall terminate two years following the Effective Date or on such other date to which the parties or their successors agree in writing. However, if a receiver is appointed for the purpose of liquidating the RESULTING ASSOCIATION, or the RESULTING ASSOCIATION ceases

to be an association the accounts of which are insured by the CORPORATION, this Agreement and all of the CORPORATION's obligations under it shall terminate upon the effective date of such occurrence.

(b) Notwithstanding termination of this Agreement as described in § 13(a), provided that the RESULTING ASSOCIATION continues to observe after the termination date all conditions, covenants, agreements of cooperation, and agreements for the use of best efforts set forth in this Agreement, the CORPORATION shall indemnify the RESULTING ASSOCIATION for (1) any loss arising from liabilities and Claims described in § 5(a), including the reasonable costs and expenses of related litigation, (2) the reasonable costs and expenses of pursuing the matters described in § 5(b), and (3) the reasonable costs and expenses incurred by the RESULTING ASSOCIATION in the prosecution of any Merging Association Claim pursuant to § 6, provided that any such liability, Claim, matter, or Merging Association Claim is in litigation on the date that this Agreement terminates, and provided further that any recovery by the RESULTING ASSOCIATION on any matter described in § 5(b) or any Merging Association Claim shall be paid over to the CORPORATION, subject to the limitations of § 5(b) and § 6(e).

§ 14 *Rights and Forbearance.* The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies given by any applicable statute or rule of law. Any forbearance, failure, or delay by any party in exercising or partially exercising any such right, power, or remedy shall not preclude its further exercise.

§ 15 *Governing Law.* This Agreement and the parties' rights and obligations under it shall be

governed by the law of the State of Minnesota to the extent that Federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 16 *Entire Agreement, Severability.*

(a) This Agreement, together with any interpretation or understanding agreed to in writing by the parties, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings of the parties in connection with it, excepting only the Merger Agreement and any resolutions or letters issued contemporaneously with this Agreement by the Bank Board or the CORPORATION, provided, however, that in the event of any conflict, variance, or inconsistency between this Agreement and the Merger Agreement the provisions of this Agreement shall govern and be binding on all parties insofar as the rights, privileges, duties, obligations, and liabilities of the CORPORATION are concerned.

(b) If any provision of this Agreement is invalid or unenforceable, all of the remaining provisions of this Agreement shall nevetheless remain in full force and effect and shall be binding upon the CORPORATION, the RESULTING ASSOCIATION, and WINSTAR.

§ 17 *Counterparts, Modification, Headings.*

(a) This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any party may execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of

reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 18 *Successors and Assigns.* All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective transferees, succesors, and assigns, but this Agreement may not be assigned to any party nor may any rights under it be transferred to or vested in any other party, through merger, consolidation, or otherwise, without the prior written consent of the CORPORATION.

§ 19 *Sole Benefit.* It is the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all of its conditions and provisions are for the sole benefit of the CORPORATION and the RESULTING ASSOCIATION and for the benefit of no other person or entity. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the CORPORATION or the RESULTING ASSOCIATION any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions.

§ 20 *Continuing Cooperation.* It is the purpose of this Agreement to provide a means by which the failure of the MERGING ASSOCIATION may be prevented, the savers and other creditors of the MERGING ASSOCIATION may be protected against losses, the thrift and economical home financing needs of the community in which the MERGING ASSOCIATION's home office is located may be served, the RESULTING ASSOCIATION and WINSTAR may receive the benefits and assume the risks contracted for, and expenses to the CORPORATION may be reduced. WINSTAR, the RESULTING ASSOCIATION, and the CORPORATION therefore agree that

they shall in good faith, and using their best efforts, cooperate with one another to carry out the purposes of this Agreement as described in this section.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers or agents.

UNITED FEDERAL SAVINGS BANK

Date: 7/12/84 By: [signature]

Attest: [signature] Its: [signature]

WINSTAR CORPORATION

Date: July 12, 1984 By: [signature]

Attest: [signature] Its: President and CEO

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Date: 7/12/1984 By: [signature]

Attest: [signature] Its: Deputy Director

COMBINATION AGREEMENT AND PLAN OF MERGER

THIS COMBINATION AGREEMENT AND PLAN OF MERGER is the contract of Windom Federal Savings and Loan Association, Windom, Minnesota, a federal mutual savings and loan association ("WINDOM" or "MERGING ASSOCIATION") and United Federal Savings Bank, Windom, Minnesota, a federal stock savings bank ("SAVINGS BANK" or "RESULTING ASSOCIATION").

RECITALS

1. The accounts of WINDOM and SAVINGS BANK are insured by the Federal Savings and Loan Insurance Corporation.

2. This merger, the supervisory conversion of WINDOM to the stock form of ownership, and the resulting acquisition of control of WINDOM are authorized by the provisions of the Home Owners Loan Act of 1933, as amended ("HOLA"), the National Housing Act, as amended, (the Act), and the rules and regulations promulgated under and pursuant to the HOLA and the Act by the Federal Home Loan Bank Board ("BANK BOARD").

3. It is deemed to be in the best interests of the members of WINDOM that WINDOM and SAVINGS BANK effect a merger upon the terms and conditions stated in this Agreement (the transaction provided for in this agreement being referred to as the "Merger").

4. It is believed that this merger will enable the RESULTING ASSOCIATION to maintain and improve WINDOM's savings, mortgage and other services, and improve the financial condition of WINDOM.

5. The following agreement is entered into in consideration of the mutual promises contained in this Agreement.

AGREEMENT

§ 1 *Merger.* WINDOM shall merge with and into SAVINGS BANK.

§ 2 *RESULTING ASSOCIATION.* The RESULTING ASSOCIATION shall be United Federal Savings Bank, Windom, Minnesota.

§ 3 *Name of the RESULTING ASSOCIATION.* The name of the RESULTING ASSOCIATION shall be United Federal Savings Bank.

§ 4 *Home Office of the RESULTING ASSOCIATION.* The home office of the RESULTING ASSOCIATION shall be located at 930 Fourth Avenue, Windom, Minnesota.

§ 5 *Charter and Bylaws of the RESULTING ASSOCIATION.* After the merger the RESULTING ASSOCIATION shall operate under the present charter and bylaws of SAVINGS BANK which are attached as Exhibit A1 and A2 respectively and constitute part of this Merger Agreement.

§ 6 *Directors of the RESULTING ASSOCIATION.* The number of directors of the RESULTING ASSOCIATION shall be six (6). The names and residence addresses of those persons who shall serve as directors of the RESULTING ASSOCIATION are listed in the attached Exhibit B, which constitutes a part of this Merger Agreement.

§ 7 *Officers.* The officers of the RESULTING ASSOCIATION shall be the officers of SAVINGS BANK.

§ 8 *Branch Offices of the RESULTING ASSOCIATION.* After the merger the branch offices of the

RESULTING ASSOCIATION shall be the present branch offices of WINDOM. The addresses of the offices that will be branch offices of the RESULTING ASSOCIATION are listed on the attached Exhibit C, which constitutes a part of the Merger Agreement.

§ 9 *Accounts.* Upon the effective date of the merger, each accountholder of the MERGING ASSOCIATION shall receive, without payment, a withdrawable account or accounts in the RESULTING ASSOCIATION equal in withdrawal value to the account or accounts held in the MERGING ASSOCIATION on such date, featuring the same rate, maturity, and other terms. Accounts of WINDOM shall continue as accounts of the RESULTING ASSOCIATION but accountholders of WINDOM shall not, due to having accounts in WINDOM, have any equity interest in the RESULTING ASSOCIATION. Accounts of the RESULTING ASSOCIATION shall be issued on the same bases as accounts issued presently by WINDOM.

§ 10 *Transfer of Assets upon Merger.* Upon the effective date of the merger, all of the assets and property of every kind or character, real, personal, and mixed, tangible and intangible, choses in action, rights, and credits then owned by the MERGING ASSOCIATION, or that would inure to it at any time thereafter, shall immediately by operation of law and without any conveyance or transfer and without further act or deed by vested in and become the property of the RESULTING ASSOCIATION, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same were possessed, held, and enjoyed by the MERGING ASSOCIATION prior to the merger. The RESULTING ASSOCIATION shall be deemed to be and shall be a continuation of the entity and identity of WINDOM. All of the rights and obligations of the MERGING ASSOCIATION shall

remain unimpaired, and the RESULTING ASSOCIATION shall, on the effective date of the merger, succeed to all of such rights and obligations, and duties connected with them.

§ 11 *Effective Date of Merger.* This Merger Agreement is effective only when approved by the BANK BOARD. The effective date of the merger shall be the date on which the merger is approved by the BANK BOARD unless another date is specified in such approval.

§ 12 *Conduct in Ordinary Course of Business.* The MERGING ASSOCIATION warrants and represents that from the date of this Agreement to the effective date of the merger, the MERGING ASSOCIATION shall have conducted its business in its ordinary and usual course, and shall not have, without the consent of the Principal Supervisory Agent for its district, or his designee,

(a) entered into any material transaction other than in the ordinary and usual course of business, except transactions in connection with this Agreement and the transactions expressly permitted by it;

(b) borrowed any money other than advances from a Federal Home Loan Bank;

(c) encumbered any of its property or other assets except as security for advances from a Federal Home Loan Bank;

(d) disposed of, transferred, or contracted to dispose of or transfer any property, real or otherwise, or other assets, except, in each case, in the ordinary and usual course of business;

(e) entered into any contract or agreement for the purchase, sale or lease of goods, materials, equipment, supplies, capital assets, real estate or any interest in real estate except, in each case, in the ordinary and usual course of its business;

(f) incurred any material obligation or liability or had any contingent liability arise except in the ordinary and usual course of business;

(g) except for individual merit increases in accordance with standard personnel practices adopted prior to the date of this Agreement, and normal periodic employee salary and wage increases scheduled prior to the date of this Agreement, made or agreed to make any increase in the rate of compensation or remuneration to any of its directors, officers, employees, agents, or other representatives;

(h) employed any person to serve as an officer, director, or senior manager who is not employed as of the date of this Agreement; employed any person pursuant to an agreement which is not terminable at the will of the MERGING ASSOCIATION; or entered into any of the following types of contracts with any employee, director, or officer, or amended any such contract that is presently binding on the MERGING ASSOCIATION: collective bargaining agreements, pension or profit sharing, bonus, severance pay, retirement, fringe benefit or other employee benefit plans, or other employment contracts;

(i) amended or permitted the amendment of its charter or bylaws;

(j) made any material change in accounting method; or

(k) engaged in transactions described in §§ 563.17-4 and 563.17-5 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation.

§ 13 *Further Actions.* All of the transactions contemplated by this Agreement have been or will be authorized by all necessary corporate actions by WINDOM, and SAVINGS BANK. WINDOM, and SAVINGS BANK, by their proper officers, shall

execute and deliver all instruments, certificates, and other documents as may be necessary or incidental to the performance of this Agreement.

§ 14 *Counterparts, Modifications, Headings.*

(a) This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and any party may execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 15 *Entire Agreement, Severability.*

(a) This Agreement, together with any interpretation or understanding agreed to in writing by the parties, constitutes the entire agreement between the parties and supersedes all prior agreements and understanding of the parties in connection with it.

(b) If any provision of this Agreement is invalid or unenforceable, then to the extent possible, all of the remaining provisions of the Agreement shall remain in full force and effect and shall be binding upon the MERGING ASSOCIATION and the RESULTING ASSOCIATION.

§ 16 *Governing Law.* This Agreement and the rights and obligations under this Agreement shall be governed by the law of the State of Minnesota to the extent that Federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 17 *Sole Benefit.* Nothing expressed or referred to in this Agreement is intended or shall be construed to

give any person other than the RESULTING ASSOCIATION or the MERGING ASSOCIATION any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions, it being the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all of its conditions and provisions are for the sole benefit of the RESULTING ASSOCIATION and the MERGING ASSOCIATION and for the benefit of no other person.

§ 18 *Acknowledgement.* The MERGING ASSOCIATION and SAVINGS BANK, by the execution of this Agreement, acknowledge and affirm that their boards of directors, by at least a two-thirds vote of each board, have approved this Agreement and the merger, authorized the execution of this Agreement, empowered the signatories to execute this Agreement, and authorized the filing of this Agreement with the BANK BOARD.

§ 19 *Assistance Agreement.* This Merger Agreement is conditioned upon the execution of an Assistance Agreement between the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION and the RESULTING ASSOCIATION and its parent holding company the Winstar Corporation, Roseville, Minnesota.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers or agents.

UNITED FEDERAL SAVINGS BANK

Date: 7/12/84 By: [signature]

Attest: [signature] Its: [signature]

WINDOM FEDERAL SAVINGS AND LOAN ASSOCIATION

Date: 6-29-84 By [signature]

Attest [signature] Its President

Federal Home Loan Bank Board

July 13, 1984

Board of Directors
United Federal Savings Bank
930 Fourth Avenue
Windom, Minnesota 56101

R.P.R.

Dear Sirs:

In connection with the merger of Windom Federal Savings and Loan Association, Windom, Minnesota ("Merging Association"), into United Federal Savings Bank ("Savings Bank"), this is to confirm the understanding that:

1. For purposes of reporting to the Board, Savings Bank may show, as a direct credit to its net worth, the cash contribution made by the FSLIC pursuant to Section 4(a)(1)(A) of the Assistance Agreement to be entered into among Winstar Corporation, Savings Bank, and the Federal Savings and Loan Insurance Corporation ("FSLIC");

2. For purposes of reporting to the Board, the value of any intangible assets resulting from accounting for the merger in accordance with the purchase method may be amortized by Savings Bank over a period not to exceed 35 years by the straight-line method;

3. For purposes of reporting to the Board, any discount arising from the adjustment of Savings Bank's mortgage loan portfolio to its fair value shall be credited to income by the level yield method assuming contractually required payments will be received for 15 years, and the

remaining balance will be repaid at the end of the 15th year or by other methods of applying the level yield method as described in R memoranda or other accounting documents acceptable under generally accepted accounting principles; and

4. The limitation of 50%, on Savings Bank's net income available for payment of dividends, as set forth in the Dividend Limitation Stipulation and Bank Board Resolution No. 84-363, is waived for its fiscal years beginning on July 1, 1985, July 1, 1986, and July 1, 1987. During Savings Bank's fiscal year beginning on July 1, 1985, it may pay as dividends up to 60% of its net income. During Savings Bank's fiscal year beginning on July 1, 1986, it may pay as dividends up to 70% of its net income. During Savings Bank's fiscal year beginning on July 1, 1987, it may pay as dividends up to 60% of its net income. But in no event may Savings Bank by the payment of dividends reduce its net worth below the level required by § 563.13 of the Insurance Regulations for institutions insured for twenty years or longer.

The accounting forbearances in the preceding paragraphs 1 through 3 are not acceptable in any financial statements which are required to be prepared in accordance with generally accepted accounting principles.

The forbearances or waivers extended by this letter do not relieve Savings Bank of its continuing obligations to maintain records of its reserve and net worth condition and to report its financial condition in accordance with applicable regulatory requirements.

This letter does not and shall not be construed to constitute forbearance or waiver by the Board or the FSLIC with respect to any regulatory or other requirements other than those encompassed within the preceding paragraphs 1 through 4. Other than actions to enforce the regulatory requirements waived in accordance with paragraphs 1 through 4 and the statutory provisions authorizing imposition of the waived requirements, insofar as such requirements are waived, the Board and the FSLIC expressly reserve all of their statutory rights and powers with respect to Savings Bank, including, without limitation, those under Section 5 of the Home Owners' Loan Act of 1933, as amended, and Sections 406 and 407 of the National Housing Act, as Amended.

By the Federal Home Loan Bank Board

J.J. Finn
Secretary

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UNITED STATES CLAIMS COURT

Civil Action No. 90-8-C
Chief Judge Loren Smith

WINSTAR CORPORATION, et al.,
Plaintiffs,

v.

THE UNITED STATES,
Defendant.

AFFIDAVIT OF E. TED YOCH IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY

Before me, a notary public for the State of Minnesota, on this date personally appeared E. Ted Yoch, being by me first duly sworn, upon his oath deposes and says:

1. I am Chief Executive Officer and Chairman of the Board of Directors of Winstar Corporation ("Winstar"). I am also Chairman of the Board of Directors of United Federal Savings Bank ("United").

2. I submit this affidavit in support of the Plaintiffs' Motion for Summary Judgment on the issues of defendant's liability. I am familiar with the matters set forth herein from my own personal knowledge or from a review of materials in the files and possession of Winstar or United.

3. Winstar was formed as a Minnesota corporation in 1984 for the purpose of acquiring control of

Windom Federal Savings and Loan Association ("Windom"), an insolvent institution at the time. United is a federal stock savings bank chartered in 1984, all of the stock of which is owned by Winstar.

4. In 1983, the organizers of Winstar, including myself, began negotiating with the Federal Home Loan Bank Board ("FHLBB") and the Federal Savings and Loan Insurance Corporation ("FSLIC") regarding the proposed acquisition of Windom. Windom was on the brink of financial ruin in 1983. Exhibit A is a true copy of a Consent Resolution adopted by Windom's Board of Directors on March 11, 1983, which was obtained from United's files.

5. Exhibit B is a true copy of a report to Windom's Board of Director from the accounting firm of McGladrey Hendrickson & Co. dated September 16, 1983, which was obtained from United's files.

6. Throughout the entire bidding and negotiating process between Winstar and FHLBB and FSLIC, it was understood by all parties that the entity that acquired Windom would be able to record as supervisory goodwill the amount by which the market value of Windom's liabilities exceeded the market value of its assets, and to amortize that goodwill over a long period of time, such as 30 to 40 years.

7. Ultimately, FHLBB and FSLIC agreed that FSLIC would provide to United a cash contribution of $1,950,000.00, plus a sum equal to Windom's aggregate negative net worth (the amount by which Windom's liabilities exceeded its assets, measured at book value). In return, Winstar agreed to form United and to invest $2 million in cash in United through the purchase of all of United's common stock.

8. After an agreement in principle was reached, the organizers of Winstar incorporated Winstar under the laws of the State of Minnesota on March 1, 1984.

Exhibit C is a true copy of a certificate from the State of Minnesota Department of State certifying that Winstar is a legally organized corporation under the laws of Minnesota.

9. In accordance with its agreement with FSLIC and FHLBB, Winstar formed United. Exhibit D is a true copy of the Plan of Organization for United.

10. United entered into a Combination Agreement and Plan of Merger with Windom setting out the terms of the acquisition. Exhibit E is a true copy of the Combination Agreement and Plan of Merger.

11. At the time of the merger between United and Windom, FSLIC entered into an Assistance Agreement with Winstar and United. Exhibit F is a true copy of the Assistance Agreement.

12. FHLBB passed a Resolution approving the supervisory merger. Exhibit G is a true copy of FHLBB Resolution No. 84-363 approving the merger.

13. FHLBB delegated certain authority pertaining to the Assistance Agreement in Resolution No. 84-364, a true copy of which is attached as Exhibit H.

14. FHLBB issued Resolution No. 84-365, further indicating its approval of the merger. A true copy of this Resolution is attached as Exhibit I.

15. In a separate forbearance letter, FHLBB set forth its commitment regarding the regulatory accounting treatment pertaining to the merger. Exhibit J is a true copy of the forbearance letter.

16. In accordance with the agreements and documents listed above, the supervisory merger between United and Windom was consummated on July 12, 1984. Winstar infused $2 million into United, receiving all of the common stock of United. United merged with Windom, and the resulting institution was known as United.

17. Under the Assistance Agreement FSLIC contributed $1,950,000.00 in cash to United. FSLIC

ultimately contributed $3,694,499.00 as its contribution based on Windom's aggregate negative net worth under § 4 of the Assistance Agreement.

18. Exhibit K is a true copy of a letter and Notes to Consolidated Statement of Financial Condition dated September 7, 1984 that was provided to United's Board of Directors by the accounting firm of McGladrey, Hendrickson & Pullen.

19. In reliance upon FSLIC's and FHLBB's express agreements concerning the use of purchase method accounting, the assets and liabilities of Windom were adjusted to fair market value at the time of the supervisory merger, and the resulting excess of liabilities over assets was recorded on United's books as supervisory goodwill to be included in capital and amortized on a straight-line basis over a period of 35 years. The amount of supervisory goodwill ultimately recorded by United as a result of the acquisition of Windom was $10,654,419.00. United also included the FSLIC cash contribution of $1,950,000.00 as capital. In financial reports filed with FSLIC and FHLBB since the supervisory merger, United has consistently booked supervisory goodwill as an asset included in capital for regulatory purposes, in accordance with, and in reliance upon, FSLIC's and FHLBB's express agreements. United has also consistently amortized the supervisory goodwill over a period of 35 years on a straight-line basis, in accordance with the agreements. Prior to the enactment of the Financial Institution Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), neither FSLIC nor FHLBB ever objected to United's treatment of supervisory goodwill.

20. After the merger with Windom, United's *tangible* net worth (i.e., exclusive of supervisory goodwill), was approximately *negative* $6.7 million.

Clearly, therefore, the purchase method of accounting for the proposed merger was integral to Winstar and United. Had Winstar and United not been permitted to record on United's books supervisory goodwill in the amount by which Windom's liabilities exceeded the fair market value of its assets, the acquisition of Windom on the remaining financial terms agreed upon would have rendered United insolvent and subject to immediate liquidation by FSLIC and FHLBB. Winstar and United would not have entered into such a transaction. Nor would they have made a proposal or entered into a transaction for the acquisition of Windom that did not include a lengthy amortization period in which to return Windom to profitability and to gradually replace supervisory goodwill with tangible assets. Thus, Winstar's willingness to form United, United's willingness to acquire Windom on the financial terms proposed, and Winstar's willingness to invest $2 million in United, were all absolutely conditioned on FHLBB's and FSLIC's agreement to permit United to report supervisory goodwill as an asset included in capital for regulatory purposes and to amortize that supervisory goodwill over a 35-year period. Absent the specified accounting treatment, Winstar and United either would have insisted upon receiving more than $5,644,500.00 in tangible financial assistance from FSLIC or would have withdrawn the offer.

21. In order to maintain United's tangible capital at 3 percent of liabilities, the regulatory minimum prevailing at the time of the supervisory merger, FSLIC would have had to contribute to United approximately $15.8 million in cash or other tangible financial assistance.

22. In 1988, Winstar purchased additional common stock from United for an additional $800,000.00. This

investment was made solely for the purpose of boosting United's capital, as Winstar already held 100 percent of United's common stock. Winstar would not have made this investment in the absence of FHLBB's and FSLIC's agreement to the specified accounting treatment for goodwill, or if Winstar or United had foreseen that the government would renege on that agreement.

23. Winstar and United have complied in good faith with all the terms and conditions of the agreements relating to the supervisory merger and have otherwise fully performed their undertakings in connection therewith.

24. As of June 30, 1989, the end of the last reporting period before the enactment of FIRREA, United reported supervisory goodwill in the amount of approximately $9.1 million. Thus, United had written off over $1.5 million of the goodwill it had acquired in its 1984 merger with Windom. Prior to FIRREA, all of the $9.1 million of supervisory goodwill was includable in United's regulatory capital. FIRREA excludes all of this goodwill for purposes of satisfying United's tangible capital requirement. FIRREA and the capital regulation promulgated by the Office of Thrift Supervision exclude all but $2.7 million of this goodwill for purposes of satisfying United's leverage limit and risk-based capital requirement. These exclusions violate Winstar's and United's contract with FHLBB and FSLIC.

25. As of September 30, 1989, it would have cost the government less to liquidate United than it would have cost FHLBB and/or FSLIC to liquidate Windom before or at the time of Windom's merger into United.

I hereby certify that the foregoing statements are true and correct, to the best of my knowledge and belief.

Dated this 27 day of March, 1990.

/s/ E. Ted Yoch
E. Ted Yoch

Subscribed and sworn to before me this 27th day of March, 1990.

/s/ MaryLou Stephani
Notary Public

My Commission Expires: June 13, 1991.

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UNITED STATES CLAIMS COURT

No. 90-773C

STATESMAN SAVINGS HOLDING CORP.,
405 Sixth Avenue
Des Moines, Iowa 50309,

and

THE STATESMAN GROUP, INC.,
405 Sixth Avenue
Des Moines, Iowa 50309,

and

AMERICAN LIFE AND CASUALTY
INSURANCE COMPANY
601 Locust Street
Two Ruan Center, Suite 1400
Des Moines, Iowa 50309,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

For their Complaint against the United States, plaintiffs Statesman Savings Holding Corp. ("SSHC"), The Statesman Group, Inc. ("Statesman Group"), and American Life and Casualty Insurance Company ("American Life"), state as follows:

NATURE OF ACTION

1. This action arises out of contractual promises made to plaintiffs by the Federal Savings and Loan Insurance Corporation ("FSLIC") and the Federal Home Loan Bank Board ("FHLBB") pursuant to their statutory supervisory authority over federally insured savings and loan institutions and savings banks (hereinafter referred to as "thrifts" or "thrift institutions"). As more fully described below, these contractual promises were made for the purpose of inducing plaintiffs to acquire and operate four failed thrift institutions. Plaintiffs' acquisition of these insolvent thrift institutions obviated their liquidation by FSLIC and FHLBB. If FSLIC and FHLBB had been forced to liquidate the institutions, the present value cost would have exceeded $173 million. Plaintiffs' acquisitions of these institutions saved FSLIC and FHLBB, by their own admission, $50 million in liquidation costs. Plaintiffs have fully performed their obligations under their contract with FSLIC and FHLBB. Although FSLIC and FHLBB have received the benefits of their contractual bargain with plaintiffs, they have broken their contractual promises to plaintiffs, partially as a result of the recently enacted Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Pub. Law, No.

101-75, 103 Stat. 183, and of certain regulations promulgated by the Office of Thrift Supervision ("OTS") pursuant to FIRREA. This repudiation and abrogation of defendants' contractual promises to plaintiffs constitute a material breach of contract that defeats the central object of this agreement, a taking of plaintiffs' property without just compensation in violation of the Fifth Amendment to the United States Constitution, and a deprivation of plaintiffs' property without due process of law in violation of the Fifth Amendment to the United States Constitution. In this action, plaintiffs seek (1) a declaration that defendants' actions effect a repudiation and material breach of their contractual obligations to plaintiffs and, that, thereby, effect a taking of plaintiffs' property without just compensation and a deprivation of plaintiffs' property without due process of law, in violation of the Fifth Amendment, and (2) an order rescinding the transaction and awarding plaintiffs compensation for all monies expended or costs incurred by them, and for the value of all benefits conferred on defendants, as a consequence of plaintiffs' purchase, operation, and management of the four thrifts.

THE PARTIES TO THE TRANSACTIONS

2. Statesman Bank for Savings, FSB ("Statesman Bank") is a conservatively managed, financially sound savings bank serving the needs of communities in Iowa and Florida. Headquartered in Des Moines, Iowa, the Bank is charted by the federal government and is a member of the Federal Home Loan Bank System. Until August 9, 1989—the date on which FSLIC was abolished under FIRREA—accounts of

the Bank's depositors were insured by FSLIC. Since August 9, 1989, such accounts have been and are now insured by defendant FDIC.

3. SSHC is a holding company organized under the laws of Iowa. SSHC has 84,000 shares of common stock outstanding, all of which is owned by plaintiff American Life. SSHC has 126,000 shares of preferred stock outstanding, all of which is owned by plaintiff Statesman Group. SSHC owns one hundred percent (100%) of the issued and outstanding common stock of Statesman Bank, is entitled to receive all dividends declared by Statesman Bank, and has the right to receive the net assets of Statesman Bank upon the liquidation, dissolution or winding up of the affairs of Statesman Bank.

4. Statesman Group is a publicly owned corporation organized under the laws of Delaware. Statesman Group owns all of the outstanding preferred stock of SSHC, and all of the outstanding common and preferred stock of American Life.

5. American Life is a corporation organized under the laws of Iowa. All of the common and preferred stock of American Life is owned by Statesman Group. American Life owns all of the outstanding common stock of SSHC.

6. Prior to enactment of FIRREA, FHLBB was an agency of the United States. Under the Home Owners' Loan Act of 1933, as amended, FHLBB was charged with, among other things, regulating and supervising federally chartered savings and loan associations and savings banks, acting as the operating head of FSLIC, enforcing compliance by such institutions with regulatory capital requirements, and structuring and approving merger and acquisition agreements for failing thrifts. FHLBB delegated certain of these functions to various Federal Home

Loan Banks throughout the country, subject to FHLBB's supervision. Under Section 401 of FIRREA, FHLBB was abolished on October 8, 1989; its functions and responsibilities, for purposes relevant to this action, have been transferred to the Director, OTS.

7. Prior to enactment of FIRREA, FSLIC was an agency of the United States established under the National Housing Act of 1934, as amended, for the purposes of, among other things, insuring the accounts of depositors in thrift institutions that are members of the Federal Home Loan Bank System, establishing and enforcing minimum levels of capital for insured institutions, enforcing compliance therewith, and structuring and approving merger and acquisition agreements for failing thrifts. It was operated under the direction of the FHLBB. Under Section 401 of FIRREA, FSLIC was abolished on August 9, 1989, and its responsibilities and functions, for purposes relevant to this action, were transferred to the Federal Deposit Insurance Corporation ("FDIC").

8. FDIC is an agency of the United States established under the Federal Deposit Insurance Act, as amended, for the purpose of, among other things, insuring the accounts of depositors in certain state and federal depository institutions. FDIC is designated under FIRREA as the successor in interest to FSLIC for purposes relevant to this action. FIRREA provides that no action or other proceeding against FSLIC shall abate by reason of FIRREA's enactment but that FDIC shall be substituted as its successor in interest.

9. OTS is a bureau of the United States Department of the Treasury, and the Director of OTS is an officer and agent of the United States. Under

FIRREA the Director is charged with regulating and supervising all federally insured savings and loan associations and savings banks and enforcing compliance by such institutions with the regulatory capital requirements to be established under section 301 of FIRREA. The Director has been designated under FIRREA as the successor in interest to FHLBB for purposes relevant to this action. FIRREA provides that no action or other proceeding against FHLBB shall abate by reason of FIRREA's enactment but that the Director shall be substituted as its successor in interest.

JURISDICTION

10. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1491.

BACKGROUND

11. During the late 1970's and early 1980's unprecedented high interest rates pushed the thrift industry's cost of retaining and obtaining new deposits substantially above the rate of return on long-term, fixed-rate mortgages in thrift portfolios, precipitating a financial crisis in the thrift industry.

12. As a result of the substantial negative spread between the thrift industry's cost of funds and its return on assets, many FSLIC-insured thrift institutions either became insolvent or were threatened with insolvency in the early 1980's, and FSLIC's insurance fund was faced with the potential loss of many billions of dollars in claims by depositors of these insolvent or troubled thrifts. For example,

during the last half of 1981 and the first half of 1982, more than 80 percent of all FSLIC-insured thrift institutions incurred operating losses.

13. Under the National Housing Act of 1934, as amended, FSLIC was at all times relevant to this action authorized to facilitate, "in its sole discretion" and "upon such terms and conditions as the Corporation may determine," the merger of a failing FSLIC-insured thrift institution into a financially sound FSLIC-insured thrift institution by providing financial assistance in the form of promissory notes ("FSLIC notes") or cash contributions to the healthy institution or by guaranteeing it against loss by reason of the merger, so long as the cost of the financial assistance provided by FSLIC did not exceed the expense that would have been incurred in liquidating the institution and paying insurance claims upon its accounts.

14. Faced with a large number of failing thrift institutions, FHLBB adopted and aggressively implemented a policy of requiring insolvent or troubled thrift institutions to merge into financially sound acquirer institutions. With respect to many such "supervisory" mergers, FSLIC exercised its authority under the National Housing Act to provide assistance in the form of cash contributions, FSLIC notes, and/or guarantees to induce financially sound acquirer institutions to merge with insolvent or troubled thrifts.

15. As the crisis in the thrift industry continued to worsen, and more and more FSLIC-insured thrift institutions became insolvent or troubled, FSLIC and FHLBB recognized that continuing to facilitate supervisory mergers with cash contributions and FSLIC notes would quickly and entirely exhaust the insurance fund. Indeed, if FSLIC had provided cash

contributions and FSLIC notes at historic levels in order to induce financially healthy acquirer institutions to enter into supervisory mergers during 1981 and 1982, the FSLIC insurance fund, according to FSLIC's own calculations, would have been exhausted by April of 1982.

16. In mid-1981, FSLIC and FHLBB were thus forced to revise their policies and practices regarding the provision of financial assistance in supervisory mergers in order to prevent, or at least forestall, exhaustion of the FSLIC insurance fund. As described below, because FSLIC and FHLBB could no longer provide the amount of cash or other tangible financial assistance necessary to induce healthy acquirer institutions to merge with insolvent or troubled FSLIC-insured thrifts, FSLIC and FHLBB began inducing and arranging supervisory mergers by providing assistance in the form of an intangible asset—"supervisory goodwill." FSLIC and FHLBB also expanded the number of potential acquirers of insolvent or troubled FSLIC-insured thrift institutions by permitting interstate mergers (in the absence of an acceptable merger proposal from a financially sound in-state acquirer institution), and inter-industry mergers (in the absence of an acceptable merger proposal from either an in-state or out-of-state thrift institution). In evaluating merger proposals, FSLIC's principal objective was to merge the insolvent or troubled thrift institution into a healthy acquirer at the lowest possible cost to FSLIC.

17. In order to induce financially sound acquirer institutions to merge with insolvent or failing FSLIC-insured thrifts with little or no cash contributions, FSLIC notes, or other tangible financial assistance from FSLIC, FSLIC and FHLBB relied primarily

upon an aggressive application of the "purchase method" of accounting for the mergers. The Generally Accepted Accounting Principles ("GAAP") applicable at the time provided that in mergers and acquisitions using the purchase method of accounting, the book value of the assets and liabilities of an acquired thrift institution should be adjusted ("marked to market") to fair market value at the time of the acquisition, and that any excess in the cost of the acquisition (which includes any liabilities assumed by the acquirer) over the fair market value of the acquired assets should be separately recorded on the acquirer institution's books as "goodwill"—an intangible, non-earning asset that may be amortized on a straight-line basis over a period of up to 40 years.

18. Because of the high interest rates prevailing at the time, the fair market value of the lower yielding fixed-rate mortgage loans held by most acquired institutions was significantly less than the mortgage loans' book value (the face amount of the loans). Accordingly, in the typical supervisory merger at that time, the aggregate fair market value of the liabilities assumed by the acquirer institution exceeded the aggregate fair market value of the acquired institution's fixed-rate loans and other assets. The amount by which the acquired institution's liabilities exceed its assets is reflected on the merged institution's books as goodwill. Goodwill recorded in connection with a supervisory merger is known as "supervisory goodwill."

19. Certain mergers accomplished under the purchase method of accounting involved the "push down" technique. In a merger accounted for under the push down method, the assets and liabilities of the acquired institution are marked to market, and the difference plus the acquiring institution's merger

costs are separately allocated to goodwill on the books of the resulting institution. According to GAAP, goodwill generated from a merger accounted for under this method may be amortized to expense by the interest method over a period no longer than that over which the discount on the interest-bearing assets acquired is to be recognized as interest income.

20. Supervisory goodwill was recorded on the merged institution's balance sheet as an asset includable in capital under GAAP and under FHLBB's regulations governing the minimum capital requirements of FSLIC-insured thrift institutions. The ability to include supervisory goodwill as capital for purposes of satisfying FHLBB's minimum capital requirements and to amortize it over a lengthy period was essential to inducing healthy acquirer institutions to merge with insolvent or troubled FSLIC-insured thrifts. By assuring acquirer institutions in supervisory mergers that supervisory goodwill would be treated in the above-described manner for regulatory purposes, FSLIC and FHLBB were able to induce and arrange supervisory mergers with minimal cash contributions and other tangible financial assistance. FSLIC and FHLBB thus saved many billions of dollars in financial assistance that FSLIC would otherwise have had to pay in order to resolve scores of insolvent and troubled FSLIC-insured thrift institutions.

21. As part of its effort to induce and arrange supervisory mergers by using supervisory goodwill in the above-described manner, FHLBB took steps to assure the thrift industry that GAAP would control in determining the application of purchase method accounting and the treatment of supervisory goodwill in supervisory mergers. In August 1981, FHLBB withdrew a proposed rule change that would have

imposed regulatory standards more stringent than GAAP for accounting for supervisory goodwill. The proposed rule would have limited the inclusion of supervisory goodwill in regulatory capital to 30 percent of the merged institution's net worth and would have required that supervisory goodwill be amortized over a period no longer than ten years. In withdrawing the proposed rule, the FHLBB stated that a principal reason for its action was that the proposal could "discourage potential merger partners from consummating necessary mergers." In September 1981 FHLBB issued Memorandum R31b, which made clear that, as a matter of FHLBB policy, GAAP would control in determining the application of purchase method accounting and the treatment of supervisory goodwill in supervisory mergers.

22. FSLIC also realized savings over the cost of liquidating failed thrifts through the creation of "FSLIC capital contributions," a regulatory capital credit. If the amount of tangible financial assistance provided by FSLIC in connection with a supervisory merger was insufficient to restore the insolvent thrift's balance sheet to minimum regulatory capital levels, the acquisition would have a negative effect on the capital position of the acquirer institution. In order to eliminate or reduce this negative effect, while holding the cost of assistance and cash outlays to a minimum, FSLIC and FHLBB assured certain acquirer institutions that FSLIC financial assistance, or some portion thereof, would be treated as regulatory capital, recordable on the resulting institution's balance sheet for regulatory reporting purposes as a direct credit to capital under FHLBB's regulations governing the minimum capital requirements of FSLIC-insured thrift institutions. This practice deviated from GAAP, which required that such cash

contributions be charged against (and thus reduce) any goodwill arising out of the transaction. The ability to include these contributions as capital for purposes of satisfying FHLBB's minimum capital requirements was in some cases essential to inducing a healthy acquirer institution to merge with an insolvent or troubled FSLIC-insured thrift on the terms proposed by FSLIC and FHLBB. By assuring acquirer institutions in supervisory mergers that some or all of the FSLIC assistance would be treated in the above-described manner for regulatory reporting purposes, FSLIC and FHLBB were able to induce and arrange supervisory mergers with minimal cash payments and other tangible financial assistance. FSLIC and FHLBB thus saved large sums of financial assistance that FSLIC would otherwise have had to pay in order to resolve many insolvent and troubled FSLIC insured thrift institutions.

23. During the last 7 months of 1981, FSLIC provided tangible financial assistance (e.g. cash, FSLIC notes) in connection with the merger of 23 insolvent or troubled FSLIC-insured thrift institutions with assets totaling $12.3 billion. These 23 supervisory mergers were arranged at a present value cost to FSLIC of $663 million, or 18 percent of the estimated cost (at present value) of liquidation. Similarly, in 1982 FSLIC provided financial assistance in connection with 49 supervisory mergers involving 77 FSLIC-insured insolvent or troubled thrifts with assets totaling $31.2 billion. The present value cost to FSLIC of these supervisory mergers was $1.2 billion, or 16.3 percent of the estimated cost of liquidation. In effect, by using supervisory goodwill in accounting for supervisory mergers under the purchase method, FSLIC transferred much of its cost of resolving insolvent or failing thrifts to the healthy members of

the industry and their shareholders. As then-Chairman Pratt stated in March 1982: "[B]y using mergers as a supervisory tool ..., we are seeking to spread as much of the industry's own net worth as possible over the industry's trouble spots as a means of conserving the FSLIC's insurance fund."

24. In 1982 the Financial Accounting Standards Board, which promulgates GAAP, issued Statement of Financial Accounting Standards No. 72 ("FASB 72"), which amended GAAP applicable to mergers initiated after September 30, 1982. FASB 72 generally requires that goodwill be amortized over a period of far less than previously permitted by GAAP. This change in GAAP did not alter FHLBB's and FSLIC's regulatory policies and practices with regard to supervisory goodwill. For regulatory accounting purposes, FHLBB and FSLIC continued to induce healthy institutions to acquire failing thrifts by allowing goodwill to be included in capital and amortized over a period of time exceeding that now allowed by GAAP.

25. The nature of the problems affecting the thrift industry changed in 1983-1984. After mid-1982, market interest rates declined, thus improving the "negative spread" that had plagued the industry. But in 1983 and 1984 thrifts increasingly faced problems with deteriorating assets. This asset quality problem threatened many thrift institutions that were just recovering from the negative spread problems of 1981-82. Thirty-five percent of all FSLIC-insured thrifts lost money in the second half of 1983.

26. Although economic conditions improved in 1983, the number of problem cases and the volume of assets handled by FSLIC in default prevention transactions continued at record levels in that year. FSLIC resolved 53 problem cases involving $17.6 billion in

assets in 1983. This marked a decrease from 77 FSLIC resolved cases in 1982, but the complexity of the problem cases increased significantly. FSLIC realized significant cost savings by resolving most of these problem cases through interstate and inter-industry acquisitions. Through aggressive use of purchase method accounting, FSLIC saved an estimated $2.4 billion over the cost of liquidation in resolving these problem cases.

27. Overall thrift industry profitability declined in 1984, despite the fact that interest rates were far below the 1981-1982 levels. In 1984 FSLIC resolved 27 problem cases involving $5.5 billion in assets. The continued growth in the size and complexity of problem cases requiring FSLIC intervention, however, created a record-high demand on FSLIC resources, precipitating a decline in FSLIC reserves from $6.4 billion at the end of 1983 to approximately $5.6 billion at the end of 1984. During 1984, despite FSLIC's efforts to obtain less costly resolutions, FSLIC was forced to place 9 institutions into liquidating receiverships. The other 18 problem cases were resolved by FSLIC at approximately 45 percent of the estimated cost of liquidation, or a savings of $693 million, largely through the use of supervisory goodwill to induce healthy institutions to take over the failing thrifts.

28. In 1985 the size and complexity of cases requiring FSLIC assistance kept the demand on FSLIC resources at record levels. The FSLIC insurance fund was being depleted so quickly that FHLBB in 1985 levied quarterly special insurance premiums on insured institutions, adding more than $1 billion to the insurance fund. Even with the extraordinary assessment, FSLIC's total insurance reserves in 1985 decreased more than $1 billion, to

$4.6 billion. FSLIC resolved 35 problem cases in 1985 involving total assets of $6.5 billion. Twenty-five of these cases involved assisted acquisitions representing $4.4 billion in total assets. Through techniques such as interstate, inter-industry, and private-investor acquisitions, the 25 assisted acquisitions saved FSLIC $547 million over the estimated cost of liquidation. During 1985, FSLIC appointed a liquidating receiver for 10 institutions. Because of the continuing high case load and associated losses, FSLIC's need for capital remained intense at the end of 1985.

29. The intense need for FSLIC capital became urgent in 1986, when the total reserves for FSLIC diminished by year end to *negative* $6.3 billion. FHLBB's overriding concern during 1986 was the development of a plan to recapitalize the FSLIC insurance fund. In 1986 the gap between profitable thrifts and unprofitable ones widened, with approximately one-fifth of the institutions experiencing accelerating losses. FHLBB and FSLIC resolved 27 problem thrifts with assisted mergers and acquisitions in 1986, involving $7.4 billion in assets. FSLIC liquidated 10 institutions in 1986.

30. In 1987, the thrift industry's financial condition continued to deteriorate, as the industry reported an overall net loss of $6.8 billion. FSLIC's financial problems also worsened and, by the end of 1987, its reserves had plummeted to a *negative* $13.7 billion as it incurred operating losses of $8.6 billion for the year. Of the 48 FSLIC cases resolved in 1987 at an estimated cost of $4.5 billion, 31 were resolved by assisted sales, saving FSLIC $400 million over the cost of liquidation. While FSLIC's capitalization problems were somewhat eased in 1987 by the passage of the Competitive Equality Banking Act of

1987 ("CEBA"), which authorized the sale of bonds to recapitalize the FSLIC, by the end of 1987 there were still 259 problem institutions in the FSLIC caseload. The estimated cost of resolving these was $17.4 billion. The General Accounting Office estimated that an additional 300 institutions with assets of about $88 billion were insolvent under GAAP standards, thereby exposing FSLIC to further risk.

31. Recognizing this, the FHLBB continued to seek ways in which to facilitate supervisory acquisitions. For example, even though CEBA required generally that thrift institutions conform their accounting practices to GAAP, the FHLBB issued accounting regulations implementing CEBA which provided that accounting forbearances would continue to be included as a component of regulatory capital. 53 Fed. Reg. 324 (January 6, 1988). The rationale for the continued infusion of accounting forbearances was that such forbearances "have often been required to facilitate the acquisition of a troubled institution...." *Id.* at 332.

32. By the end of 1988, FSLIC's deficit had increased to $75 billion. It incurred a net loss of $66 billion for the year, and the thrift industry's net losses, at $13 billion, were almost double the year before. While FSLIC reported a $43.6 billion loss allowance for the estimated cost of resolving 578 problem thrifts that had not been resolved in 1988, it was able to dispose of 205 insolvent thrifts and stabilize 18 others by supplementing its CEBA bond receipts with FSLIC notes and long-term assistance agreements to attract acquirers of insolvent institutions. As FSLIC did not have the additional billions in cash to liquidate insolvent institutions and to pay off depositors, FSLIC arranged less expensive transactions with acquirer institutions through the use of

assistance agreements continuing provisions to cover the negative net worth of failed thrifts and to cover losses on nonperforming or poor quality assets.

THE TRANSACTIONS

33. On March 11, 1988, plaintiffs, through the newly formed Statesman Bank, purchased substantially all of the assets and assumed substantially all of the liabilities of First Federated Savings Bank, of West Palm Beach, Florida ("Federated"), from FSLIC, which had recently been appointed receiver for Federated. On that same date, March 11, 1988, Statesman Bank merged with First Federal Savings Bank of Waterloo Iowa ("First Federal"), Peoples Savings and Loan Association of Waterloo Iowa ("Peoples"), and The Perpetual Savings and Loan Association of Waterloo, Iowa ("Perpetual"). First Federal, Peoples, and Perpetual are sometimes hereinafter referred to as the "Waterloo Institutions." The acquisitions all took place in a supervisory transaction induced and arranged by FSLIC and FHLBB.

34. Federated was a stock savings bank organized under the laws of Florida, the accounts of which were insured by FSLIC. For the year ended December 31, 1987, Federated reported a net loss of over $7 million. This reported loss did not include various audit adjustments made during the year for additional charge-offs of approximately $32 million. By Resolution No. 88-167 dated March 11, 1988, FHLBB concluded that Federated was insolvent and appointed FSLIC receiver for Federated contingent upon receipt of approval from the Comptroller, Bureau of Thrift, Savings and Loan Section, of the

State of Florida pursuant to 12 U.S.C. 1729. The Comptroller provided such approval, and FSLIC was appointed receiver for First Federated that same date.

35. Prior to the merger, Perpetual was a mutual thrift chartered under the laws of Iowa, the accounts of which were insured by FSLIC. For the year ended December 31, 1987, Perpetual reported a net loss of $4.2 million. By Resolution No. 88-168 dated March 11, 1988, FHLBB concluded that Perpetual was insolvent and appointed FSLIC conservator for Perpetual contingent upon receipt of approval from the Superintendent of Savings and Loans of the State of Iowa pursuant to 12 U.S.C. 1729. The Superintendent of Savings and Loans of Iowa provided such approval, and FSLIC was appointed conservator for Perpetual that same date.

36. Prior to the merger, First Federal was a federally chartered mutual savings bank, the accounts of which were insured by FSLIC. For the year ended December 31, 1987, First Federal reported a net loss of $12.5 million. At the time of its merger into Statesman Bank, First Federal was insolvent.

37. Prior to the merger, Peoples was a federally chartered mutual savings and loan association, the accounts of which were insured by FSLIC. For the year ended December 31, 1987, Peoples reported net loss of $4.4 million. At the time of its merger into Statesman Bank, Peoples was insolvent.

38. In 1987, the Statesman Group explored the possibility of acquiring a subsidiary of Federated with assistance from FSLIC. In discussions with FSLIC thereafter, FSLIC "packaged" Federated with the three Waterloo Institutions, and requested bids from others for the potential acquisition of the four institutions.

39. On January 8, 1988, plaintiffs submitted a proposal ("Proposal") to acquire the four institutions. The Proposal made clear that plaintiffs were not content to rely on FHLBB's policies regarding certain aspects of the transaction, as it specified many of the conditions of the proposed acquisitions. The Proposal called for the formation and capitalization of SSHC and Statesman Bank. The initial capital infusion by plaintiffs into SSHC was to be $21 million, of which $12.6 million was to be contributed by Statesman Group in the form of Statesman Group preferred stock, and $8.4 million was to be cash contributed by American Life. SSHC was to infuse all of the preferred stock and cash into Statesman Bank. Statesman Bank was to be organized and chartered by FSLIC, and then turned over to SSHC to be a wholly-owned subsidiary of SSHC. The Proposal called for assistance from FSLIC in the fore of cash and a promissory note in the total amount of the combined deficit of the four failed associations, with adjustments. FSLIC was also to guarantee partial reimbursement of losses on certain Covered Assets, to provide payments for spread and yield maintenance on certain covered assets, and to provide indemnification against certain losses.

40. The Proposal also spelled out certain regulatory considerations and forbearances. First, the Proposal made clear that the purchase method of accounting was to be used, and that $21 million of the FSLIC cash contribution was to be a "capital credit" and would thus become a permanent part of Statesman Bank's regulatory net worth. Specifically the Proposal stated:

> For regulatory purposes, with respect to the books and records of [Statesman Bank], push-down accounting shall be used to record the purchase of [Statesman Bank's] capital stock by SSHC. Twenty-one million of the cash contribution to be made to [Statesman Bank] pursuant to an assistance agreement to be entered into between the FSLIC and Statesman [Group] is to be a credit to [Statesman Bank's] regulatory capita; therefore, for regulatory accounting purposes, [Statesman Bank] will book such contribution as a direct addition to its net worth. Accordingly, immediately after the acquisition, the regulatory capital of [Statesman Bank] will be $42,000,000, which will consist of $21,000,000 in capital infused by SSHC, plus $21,000,000 in capital contributed by the FSLIC which will be treated as regulatory capital. Not later than 30 days following the acquisition, [Statesman Bank] shall submit to the Supervisory Agent an opinion of independent certified public accountants that [Statesman Bank] has accounted for the transaction in accordance with generally accepted accounting principles ("GAAP") including the use of "push down" accounting, except that as provided by the Board, for purposes of reporting to the Board, twenty-one million dollars of the cash contribution by the FSLIC to [Statesman Bank] pursuant to the assistance agreement shall be deemed a contribution to regulatory net worth and will be booked as a direct credit to [Statesman Bank].

41. The Proposal called for additional regulatory considerations and forbearances, including a regulatory capital maintenance agreement, waiver of certain debt restrictions that may apply to Statesman Group, authorization of certain cross-marketing activities by

plaintiffs, and other considerations and forbearances. Many of these considerations and forbearances were required to provide for waivers of regulatory restrictions on companies such as Statesman Group and American Life, which were engaged in the insurance business, to acquire a controlling interest in a thrift institution. All regulatory forbearances, including the insistence of purchase method accounting and the requirement of the permanent capital credit, were integral to the acquisitions and without which the transactions would have been nonsensical.

42. Attached as Appendix E to the Proposal was a letter from the independent accounting firm of Ernst and Whinney, which concluded that, "the proposed use of the purchase method of accounting will be in accordance with [GAAP]." The letter went on to state that the Statesman Group's "proposal presents the $25 million excess of liabilities assumed over the estimated fair value of assets acquired as an unidentified intangible," [i.e., goodwill].

43. The Proposal incorporated by reference the plaintiffs' Business Plan. The Business Plan made clear that the purchase method of accounting was integral to the proposal, as it stated that, "[t]he projected financial statements have been prepared with purchase accounting being applied by use of the 'Push-Down' method. Inasmuch as the acquisition does not give rise to continuity of ownership, Statesman believes that application of the purchase method is appropriate and is in accordance with [GAAP]." The Business Plan also expressly stated that it was "based upon the assumption that certain regulatory forbearances and considerations will be granted," and stressed that the forbearances were "necessary to consummate the transaction." The Business Plan contained projected statements of

condition, which indicate that the $21 million of the cash contribution from FSLIC was to be treated as permanent regulatory capital of Statesman Bank and not subject to reduction through amortization. The notes to the projections made clear that the purchase method of accounting was a major assumption on which the entire proposal was based:

> (3) *Accounting for the Acquisition*
>
> The accompanying projected financial statements have been prepared assuming purchase accounting is applied to record the acquisition of the Bank and that purchase accounting is applied by the "push down" method as of December 31, 1987. Purchase accounting is the method of recording a business acquisition by adjusting assets and liabilities to market value and eliminating net worth. "Push-down" refers to recording the adjustments on the books of the acquired company.

The Business Plan expressly contemplated that Statesman Bank would record on its books "[g]oodwill of approximately $25.8 million arising from the acquisition...."

44. Plaintiffs also submitted to FSLIC an Application H-(e)1 ("Application") for approval of the acquisition of the banks, dated February 12, 1988. The Application incorporated the Proposal and the Business Plan. In additional, the Application made clear that, "the Acquisition Proposal is subject to a number specific terms and conditions, among which are certain regulatory forbearances and considerations to be granted or obtained by the FSLIC.... Applicant wishes to emphasize the importance of the requested forbearances and considerations to the

completion of the Acquisition...." The Application also summarized the specified conditions, stressing that,

> [f]or regulatory purposes with respect to the books and records of [Statesman Bank], push-down accounting shall be used to record the purchase of [Statesman Bank's] capital stock by the Holding Company. Twenty-one million dollars of the cash contribution to be made to [Statesman Bank] pursuant to an assistance agreement to be entered into between the FSLIC and Applicant is to be a credit to [Statesman Bank's] regulatory capital; therefore, for regulatory accounting purposes, [Statesman Bank] will book such contribution as a direct addition to its net worth.

The Application did not even refer to the possibility that the $21 million capital credit would be amortized.

45. The Application also reiterated several other regulatory considerations and forbearances that were integral to the transaction. On March 1, 1988, plaintiffs amended their Application H-(e)1 in certain respects, but did not amend any aspect of the proposal affecting the use of the purchase-method accounting or of the $21 million capital credit.

46. The purchase method of accounting and the capital credit for $21 million of the FSLIC cash contribution were integral to plaintiffs' bid. Had plaintiffs not been permitted to record as capital the supervisory goodwill in the amount by which the acquired institution's liabilities exceeded their assets in addition to the $21,000,000 of FSLIC assistance, plaintiffs' acquisition of the institutions on the financial terms proposed would have rendered the entire transaction senseless. Had Statesman Bank not been permitted to record supervisory goodwill and

the $21 million of FSLIC assistance as regulatory capital, it would have been considered insolvent for regulatory purposes on the date of the acquisition, and thus immediately subject to liquidation by FHLBB and FSLIC. Plaintiffs would not have made such a proposal. Nor would they have made a proposal which did not include the other requested regulatory considerations and forbearances. Thus, plaintiffs' willingness to enter into the supervisory transaction on the financial terms set forth in the Proposal was absolutely conditioned on FHLBB's and FSLIC's agreement to permit plaintiffs to report supervisory goodwill as capital, and to report the $21 million of FSLIC assistance as a permanent credit to the capital of Statesman Bank for regulatory purposes. Absent all of the specified regulatory considerations and forbearances, plaintiffs either would have insisted upon receiving far greater tangible financial assistance from FSLIC, such as additional cash contributions or promissory notes, or would have withdrawn their offer.

47. FSLIC and FHLBB determined that plaintiffs' bid was the most attractive solution for the four insolvent institutions. The parties negotiated and agreed upon several of the terms and conditions of the transaction, set forth below. After FSLIC and FHLBB selected plaintiffs' bid, FHLBB and FSLIC organized and chartered Statesman Bank, and caused it to issue common stock to SSHC at closing. Statesman Bank entered into a separate Merger Agreement and Plan of Merger ("Merger Agreement") with each of the three Waterloo Institutions. Each of the Merger Agreements was expressly conditioned upon the execution of an Assistance Agreement among FSLIC, Statesman Bank, Statesman Group, American Life, and SSHC.

48. Statesman Bank also entered into an Acquisition Agreement with FSLIC as receiver for Federated, under which Statesman Bank agreed to purchase substantially all of the assets, and to assume substantially all of the liabilities, of Federated. The Acquisition Agreement stated that computations made for purposes of the acquisition would be governed by GAAP, except that where GAAP conflicted with any action, regulations or resolutions of FHLBB and FSLIC, then the action, regulation or resolution would prevail over GAAP. The Acquisition Agreement also incorporated FHLBB Resolutions adopted contemporaneously with the Acquisition Agreement.

49. FSLIC and all of the plaintiffs entered into an Assistance Agreement pertaining to the transaction. Under the Assistance Agreement, FSLIC agreed to contribute $60 million to Statesman Bank. The Assistance Agreement states that $26 million of the $60 million cash contribution from FSLIC was to be considered part of Statesman Bank's regulatory capital. In addition, under the Assistance Agreement, FSLIC delivered a Promissory Note in the amount of the difference between the acquired associations' negative regulatory capital and the $60 million cash provided by FSLIC. Also under the Assistance Agreement, Statesman Bank delivered to FSLIC a Subordinated Debenture in the face amount of $5 million at a term of ten years. The Assistance Agreement provided that it "shall be governed by GAAP, except that where such principles conflict with the terms of the Agreement, applicable regulations of the Bank Board or [FSLIC], or any resolution or action of the Bank Board approving or relating to the Acquisition, the Mergers or to this Agreement, then this Agreement, such regulations, or such

resolution or action shall govern." The Assistance Agreement also provided for continuing FSLIC assistance on certain Covered Assets on which FSLIC was to assume 93 percent of losses.

50. Also on March 11, 1988, plaintiffs entered into a Regulatory Capital Maintenance Agreement with FSLIC, under which plaintiffs agreed that Statesman Bank would maintain the regulatory capital of the Bank in compliance with regulatory capital requirements. Section 2 of that Agreement defined regulatory capital to include "amounts permitted by the FSLIC in the Assistance Agreement and in the forbearances issued in connection with the transactions discussed herein." The Regulatory Capital Maintenance Agreement provided that the computations of regulatory capital "shall be perpetual." Under that Agreement, Statesman Group and American Life guaranteed to infuse up to $4 million of capital into Statesman Bank and SSHC as necessary to maintain Statesman Bank's regulatory capital at required levels. Also, under the Regulatory Capital Maintenance Agreement plaintiffs granted FSLIC voting rights for the stock of SSHC, to be exercised in the event that Statesman Bank failed to satisfy minimum regulatory capital requirements.

51. The Assistance Agreement and the Regulatory Capital Maintenance Agreement incorporated the Resolutions of the Bank Board issued in connection with the acquisitions. One of the Resolutions issued by FHLBB, Resolution No. 88-169, recited that the transfer of the assets and liabilities of Federated as provided for in the Acquisition Agreement "is the most desirable alternative, consistent with Bank Board and FSLIC policy, to the liquidation of [Federated] and the payment of insurance on its accounts...." The Resolution also determined that

each of the acquired associations was a "failing institution," that the acquisition of Federated and the mergers of the Waterloo Institutions "would lessen the risk to the FSLIC," that "no other offer was made to acquire all of the Associations," that there was no other qualified offeror who presented an acceptable offer "the estimated cost of which was within the lesser of 15 percent or $15 million of the cost of the offer of the Applicants to acquire all of the associations," that plaintiffs' bid "presents the lowest expense and least risk to the FSLIC of any proposal submitted for any of the Associations," and that "the offer of the Applicants is substantially less costly to the FSLIC than any alternative proposal or proposals." FHLBB further found that "financial assistance and indemnification by the FSLIC are necessary to prevent the default of each Association and to facilitate the Acquisition and the Mergers."

52. The Resolution approved the Assistance Agreement, the Promissory Note, the Subordinated Debenture, and the forbearances from regulatory requirements.

53. With respect to the acquisition of Federated's assets and liabilities and the mergers of the Waterloo Institutions, FHLBB resolved that Statesman Bank shall report to FHLBB and FSLIC that the transactions were accounted for in accordance with GAAP as interpreted by FHLBB and FSLIC regulations, but specifically noted two departures from GAAP: (a) that the $21 million contribution by FSLIC and the $5 million principal amount of the Subordinated Debenture issued to FSLIC "shall be credited to the regulatory capital account of" Statesman Bank; and (b) that goodwill could be amortized over a period of up to 25 years. FHLBB further resolved that Statesman Bank shall furnish an independent certified

accountant's opinion within 90 days following the effective date which shall "indicate that the Acquisition and the Mergers were consummated in accordance with [GAAP] except as otherwise authorized by the Bank Board," and

> which shall (a) specifically describe, as of the Effective Date, any intangible assets, including goodwill and the discount and premiums arising from the Acquisition and the mergers, to be recorded on [Statesman Bank's] books, and (b) substantiate the reasonableness and conformity with regulatory requirements of the amounts attributed to intangible assets, including goodwill and the discounted premiums, and the related amortization periods and methods....

54. At closing FHLBB issued to Statesman Bank a forbearance letter which set forth eleven enumerated regulatory forbearances that had been negotiated and agreed upon by plaintiffs and FHLBB, and which are part of the parties' contractual commitments. The forbearance letter included FHLBB's agreement (a) not to enforce for five years regulatory capital deficiencies arising from specified items, including the acquired associations' liabilities and net worth deficiency, and (b) to include $21 million of FSLIC's contribution, and the $5 million face amount of the Subordinated Debenture, in Statesman Bank's regulatory capital.

55. In accordance with the agreements of the parties, at closing FSLIC issued to Statesman Bank a promissory note of $43 million which has subsequently been adjusted to a principal amount of over $55 million. Statesman Bank also issued to FSLIC a Subordinated Debenture in the face amount of $5 million.

56. The purchase of Federated's assets and the assumption of its liabilities, and the supervisory mergers of the Waterloo Institutions, were all consummated on March 11, 1988 in accordance with the terms and conditions set forth in the items described above.

57. In reliance upon FSLIC's and FHLBB's express contractual agreement concerning the use of purchase-method accounting, the acquired assets and liabilities of Federated, Perpetual, Peoples, and First Federal were adjusted to fair market value at the time of the transactions, and the resulting excess of liabilities over acquired assets was recorded on Statesman Bank's books as an intangible asset to be included in capital and amortized in accordance with FASB 72. The amount of supervisory goodwill ultimately recorded by Statesman Bank as a result of the acquisitions was $27,874,583. Also in reliance on FHLBB's and FSLIC's express agreements, Statesman Bank recorded as regulatory capital the $21 million of FSLIC assistance and the $5 million face amount of the Subordinated Debenture. In financial reports filed with FSLIC and FHLBB since the transaction, Statesman Bank has consistently reported these items as assets included in capital for regulatory purposes, in accordance with and in reliance upon, FSLIC's and FHLBB's express agreement. In accordance with the agreements with FSLIC and FHLBB, Statesman Bank has not amortized the $21 million capital credit in its reports to FHLBB. FHLBB objected to Statesman Bank's failure to amortize the capital credit, despite its agreement that the capital credit shall be perpetual. Other than this objection, prior to the enactment of FIRREA, neither FSLIC nor FHLBB objected to Statesman Bank's regulatory accounting treatment of these items.

58. FLSIC and FHLBB benefited enormously from the use as regulatory capital of supervisory goodwill, the capital credit of $21 million, and the $5 million face amount of the Subordinated Debenture in connection with the acquisition of Federated's liabilities and assets, and the mergers of the Waterloo Institutions. As of December 31, 1987, the four failed institutions reported an aggregate negative net worth of $90.2 million. If these figures were adjusted to reflect the fair market value of the assets and liabilities, the difference between the liabilities and assets would exceed the aggregate negative net worth of the institutions. Indeed, the initial audit reports (before the GAAP purchase accounting mark to market entries), currently in the process of finalization, detail the negative regulatory net worth of the four institutions at an amount in excess of $115 million in the aggregate. When the failed thrifts' assets and liabilities were later marked to market, Statesman Bank ultimately recorded the difference as supervisory goodwill in the amount of $27,874,583. This figure did not include FSLIC's exposure of 93 percent of the losses on Covered Assets under the Assistance Agreement. If all of the Covered Assets of the four failed thrifts had been included in the mark to market analysis, the difference between the fair market value of the four thrifts' assets and liabilities would have increased by more than $30 million. Thus, the cost of liquidating the four institutions would have exceeded the sum of (a) the aggregate negative regulatory capital of $115 million, (b) the goodwill of $27.9 million, and (c) $30 million as the allowance for loss on the remaining 93 percent of Covered Assets, for a total of $172.9 million. Even this figure is a conservative estimate of the cost of liquidation, in light of operating losses, deterioration of asset

quality, deposit outflows, and resolution costs such as brokerage fees, holding costs, etc.

59. Indeed, in a Statement Before the Committee on Banking, Housing and Urban Affairs of the United States Senate dated May 26, 1988, M. Danny Wall, then Chairman of FHLBB, praised many aspects of the Statesman transaction, stating that "the financial assistance provided by the FSLIC in connection with these acquisitions was $50 million less than the cost to FSLIC of liquidating the four institutions." Mr. Wall referred to the transaction as "one of the more significant acquisitions arranged by FSLIC," and stated that it was "noteworthy not only for the number of institutions involved," but also because FHLBB granted forbearances as to cross-marketing of products and services between subsidiaries of Statesman Group and Statesman Bank. Mr. Wall stated that any restrictions on cross-marketing "would have been a material impediment" to a transaction worth $50 million to the government.

60. Plaintiffs have complied in good faith with all the terms and conditions of the agreements relating to the acquisition of the four institutions and have otherwise fully performed their undertakings in connection therewith.

61. Plaintiffs' acquisitions of and investment in Federated and the Waterloo Institutions were made in reliance upon FHLBB's and FSLIC's policies and statements encouraging and approving the use of the purchase method of accounting and the inclusion of goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in capital for regulatory reporting purposes. FHLBB and FSLIC were fully aware of plaintiffs' reliance on these policies and statements, and well knew or should have known that none of the plaintiffs would

acquire or invest in Federated and the Waterloo Institutions absent the specified regulatory accounting treatment of goodwill, the $21 million regulatory capital credit, and inclusion of the $5 million face amount of the Subordinated Debenture in regulatory capital.

62. The parties' agreement concerning the use of supervisory goodwill, the permanent capital treatment of the $21 million capital credit, and the inclusion of the $5 million face amount of the Subordinated Debenture were essential terms and conditions of the transaction, and were essential to the parties' purpose of allowing plaintiffs a reasonable opportunity to turn the four failed thrifts into a profitable venture. Plaintiffs would not have agreed to acquire the four failed thrifts in the absence of such regulatory accounting treatment, because Statesman Bank would have been left insolvent and because Statesman Bank would otherwise have been unable to manage itself without substantial regulatory oversight that would interfere with its business and prospects.

STATESMAN BANK'S POST-MERGER PERFORMANCE

63. Plaintiffs' acquisition of the four failed institutions prevented their default and liquidation, thus saving the FSLIC insurance fund, by FHLBB's admission, $50 million. Since the acquisition, Statesman Bank has performed well, achieving the purposes of the acquisitions. Statesman Bank has resolved problem loans, eliminated non-performing assets, and operated soundly. In human terms, the value of plaintiffs' success cannot be measured. By preventing

the liquidation of the four institutions, the acquisitions not only saved FSLIC millions of dollars, they saved the jobs of hundreds of people and preserved important services for thousands of savers, home buyers, and other customers in the communities served by the insolvent thrifts.

64. FSLIC's and FHLBB's contractual promises, for which plaintiffs provided substantial consideration and on which they detrimentally relied in fully performing their obligations under their agreements with FSLIC and FHLBB, entitled Statesman Bank to record supervisory goodwill, the $21 million capital credit, and the $5 million face amount of the Subordinated Debenture as credits to capital for purposes of defendants' regulatory capital requirements. These contractual promises also entitled Statesman Bank to report the $21 million capital credit as perpetual capital that need not be amortized. Plaintiffs' contract rights arising out of the above-described agreements with FSLIC and FHLBB constitute property within the meaning of the Fifth Amendment to the United States Constitution.

FIRREA

65. FIRREA was signed into law by President Bush on August 9, 1989. Section 301 of FIRREA required the Director of OTS to promulgate, no later than November 7, 1989, final regulations establishing minimum capital requirements for federally insured thrifts. These minimum capital requirements became effective on December 7, 1989, and require federally insured thrifts to:

(a) maintain "tangible capital," which excludes intangible assets including supervisory goodwill, in an amount not less than 1.5 percent of the thrift's assets;
(b) maintain "core capital," as defined in the statute, in an amount not less than 3 percent of the thrift's assets; and,
(c) maintain "risk-based capital" in an amount not materially less than that required by the Comptroller of the Currency for national banks.

66. FIRREA provides that "tangible capital" shall not include intangible assets and supervisory goodwill, and that only limited amounts of "core capital" may be made up of supervisory goodwill. Prior to January 1, 1992, the amount of supervisory goodwill includable in core capital may not exceed 1.5 percent of total assets. Thereafter, the amount of supervisory goodwill (as a percentage of assets) includable in core capital declines each year, in accordance with the following schedule:

January 1, 1992, to December 31, 1992 .... 1.0 percent
January 1, 1993, to December 31, 1993 .... 0.75 percent
January 1, 1994, to December 31, 1994 .... 0.375 percent
Thereafter ..... 0 percent

For purposes of the minimum capital requirements, supervisory goodwill must be amortized over a period not to exceed 20 years.

67. FIRREA does not abrogate contracts and forbearances of FHLBB and FSLIC, and indeed provides that all orders, resolutions, determinations and regulations of FHLBB and FSLIC shall continue

in effect and be enforceable against OTS and FDIC. FIRREA does not exclude FSLIC capital contributions on the face amount of Subordinated Debenture from capital for purposes of determining compliance with any of the minimum capital requirements, at least where governed by contrary contractual provisions and forbearances. Nor does FIRREA require that supervisory goodwill be excluded from capital for purposes of determining compliance with minimum "risk-based" capital requirements.

68. FIRREA also requires the Director of OTS to enforce the following restrictions against federally insured thrifts that do not meet the minimum capital standards promulgated under FIRREA:

(a) After January 1, 1991, the Director must prohibit the asset growth of any federally insured thrift not in compliance with regulatory capital standards, except that the Director may approve a "limited growth exception" upon specified conditions. In addition, the Director may restrict the asset growth of any such thrift at any time prior to January 1, 1991.

(b) As of January 8, 1990, the Director required thrifts that do not meet minimum capital standards under FIRREA to submit a plan ("capital plan") that (1) addresses the thrift's need for increased capital under FIRREA; (2) describes the manner in which the thrift will increase its capital to achieve the minimum capital standards; (3) specifies types and levels of activities the thrift will engage in; (4) requires any increase in assets to be accompanied by specified increases in tangible and risk-based capital; and, (5) is

acceptable to the Director. The Director must treat any material failure to comply with such a plan as an unsafe and unsound practice.

(c) After January 1, 1991, the Director *must* require federally insured thrifts that do not meet minimum capital standards under FIRREA to comply with a capital directive which may include restrictions on the payment of dividends and on compensation, as the Director determines to be appropriate. FIRREA permits, but does not require, the Director to exempt thrifts from receipts of a capital directive in certain circumstances.

69. The Director may impose other restrictions on federally insured thrifts that do not meet minimum capital standards promulgated under FIRREA:

(a) The Director, in his discretion, may treat any thrift's failure to maintain capital at minimum regulatory levels as an unsafe or unsound practice subjecting the thrift to a range of further actions by the Director, including, among other things, issuance of cease and desist orders, appointment of a conservator or receiver, and suspension or removal of officers and directors.

(b) Such thrifts also must notify the Director of the proposed addition of any individual to the board of directors or of the employment of any individual as a senior executive officer of the thrift 30 days before such addition or employment becomes effective, and the Director may before the end of that 30 days disapprove the addition or employment.

70. FIRREA does not define "goodwill" or "supervisory goodwill."

OTS CAPITAL REGULATION

71. On November 8, 1989, OTS published minimum capital regulations ("OTS capital regulation") pursuant to FIRREA. The OTS capital regulation became effective on December 7, 1989.

72. In accordance with FIRREA, the OTS capital regulation establishes a minimum "tangible" capital requirement of 1.5 percent of total assets and a minimum "core" capital requirement of 3 percent of total assets. Supervisory goodwill cannot be counted as "tangible" capital at all, and can be counted as "core" capital only in accordance with the phase-out schedule set forth in FIRREA (see paragraph 66 above).

73. FIRREA does not require that supervisory goodwill be excluded from capital for purposes of determining compliance with minimum "risk-based" capital requirements. Nonetheless, the OTS capital regulation permits the inclusion of supervisory goodwill in capital for purposes of the minimum "risk-based" capital requirement only in accordance with the phase-out schedule set forth in FIRREA for determining compliance with the minimum "core" capital requirement (see paragraph 66 above).

74. Under the OTS capital regulation, the $21 million dollar capital credit, which the parties had agreed would be fully includable in Statesman Bank's regulatory capital without reduction through amortization, is considered "qualified supervisory goodwill." Therefore, it is excluded completely from Statesman Bank's tangible capital, and only limited amounts may be used to satisfy Statesman Bank's core and risk-based capital requirements.

75. Under FIRREA and the OTS capital regulation, the $5 million face amount of the Subordinated

Debenture, which the parties had agreed would be fully includable in Statesman Bank's regulatory capital, is considered "supplementary capital." Under that designation only portions of that amount are includable to satisfy Statesman Bank's risk-based capital requirement, and the amount is entirely excluded from Statesman Bank's tangible and core capital requirements.

76. Apart from the requirements and restrictions imposed by FIRREA on federally insured thrift institutions that fail to meet minimum capital requirements, the OTS capital regulation mandates a variety of additional consequences. For example, in addition to submitting a capital plan for achieving compliance with the minimal capital requirements, a noncomplying thrift must, under the OTS capital regulation, certify that while the plan is under review by OTS, it will not (absent OTS approval) (1) grow beyond net interest credited, (2) make any capital distributions, or (3) act inconsistently with any other limitations on activities established by statute, regulation, or by OTS in supervisory guidance. If a plan is not approved by OTS, the submitting thrift "shall immediately and without any further action" refrain from increasing its assets beyond the amount held on the day it receives notice of the disapproval and comply with any other restrictions or limitations set forth in OTS's written disapproval of the plan. The OTS capital regulation further provides that OTS may, "though enforcement proceedings or otherwise," require any thrift that fails to meet any of its regulatory capital requirements to take one or more of the following corrective actions:

(a) increase the amount of its regulatory capital to a specified level or levels;

(b) convene a meeting or meetings with the OTS supervision staff for the purpose of accomplishing the objectives of this section;
(c) reduce the rate of earnings that may be paid on savings accounts;
(d) limit the receipt of deposits to those made to existing accounts;
(e) cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;
(f) cease or limit lending or the making of a particular type or category of loan;
(g) cease or limit the purchase of loans or the making of specified other investments;
(h) limit operational expenditures to specified levels;
(i) increase liquid assets and maintain such increased liquidity at specified levels; or
(j) take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or the depositors or investors in the savings association.

On or after January 1, 1991, these restrictions, "and any other restrictions the Director [of OTS] determines appropriate," may be included in a "capital directive" issued by the Director against a noncomplying thrift. Finally, according to the OTS capital regulation, OTS must treat as an unsafe and unsound practice "any material failure by a savings association to comply with any plan, regulation, written agreement undertaken or order or directive issued to comply with the requirements of [the capital regulation]."

77. In "Thrift Bulletin 36," now effective, OTS specified that acceptance of a capital plan submitted

by a noncomplying thrift will be predicted on certain additional stringent conditions, including among others:

(a) The management and the board of directors must execute an operating agreement which may provide, among other things, that if specific targets within the plan are not met or the thrift takes any action that does not comport with the plan, certain activities will be significantly restricted, a consent to merge agreement will be executed, or management and the board of directors will resign.
(b) The board of directors and senior management for the thrift must file an amendment, acceptable to the OTS District Director, to the capital plan within 15 days following an event or circumstance that materially affects the validity of the capital plan or its underlying assumptions. At a minimum, the capital plan must be reviewed and revised as necessary on an annual basis.
(c) The thrift must submit to the OTS District Director, within 20 days following the close of each calendar quarter, quarterly variance reports comparing actual capital to the targets established in the capital plan. Failure to file such variance reports shall constitute an unsafe and unsound practice. Variances that the District Director deems to be material may be grounds for revoking acceptance to the capital plan.

78. According to Thrift Bulletin 36, a thrift that fails to comply with any of its minimum capital requirements will be deemed to be in noncompliance

upon "adoption" of the OTS capital regulation, rather than upon the rejection of any capital plan submitted by the thrift.

79. Thrift Bulletin 36 recognizes that, apart from the specific restrictions set forth in FIRREA and the OTS capital regulation, there are a significant number of related OTS regulations, rule, and policy statements that limit or restrict a variety of essential business activities, (e.g., payment of dividends, establishment of branches, receipt of Federal Home Loan Bank advances, investments in securities and real estate) by thrifts that do not meet minimum capital requirements. Thrift Bulletin 36 requires that thrifts "request and receive approval of specific, express exemptions" from the operation of such related regulations "as part of the capital plan to be deemed in capital compliance."

THE IMPACT OF FIRREA AND THE OTS REGULATION

80. As of September 30, 1989, prior to the effective date of FIRREA and the OTS capital regulation, Statesman Bank's regulatory capital was $53.2 million—$15.8 million in excess of its required minimum of $37.4 million. As of that date, Statesman Bank reported supervisory goodwill and other intangible assets in the amount of $24,077,000, and fully included the OTS capital credit of $21 million and the $5 million face amount of the Subordinated Debenture in its regulatory capital. Statesman Bank does not satisfy the three new capital standards of FIRREA and the OTS capital regulation. As of December 31, 1989, after the OTS capital regulation became effective, Statesman Bank reported tangible capital of

negative $2.8 million ($11.8 million less than the required level of $9 million); core capital of $6.8 million ($11.2 million less than the required level of $18 million); and risk-based capital of $13.7 million ($10 million less than the required level of $23.7 million). If Statesman Bank were permitted to record as regulatory capital its remaining supervisory goodwill, the $21 million capital credit, and the $5 million face amount of the Subordinated Debenture, it would have reported as of December 31, 1989, tangible capital of $23.2 million, core capital of $32.8 million, and risk-based capital of $36.5 million. Therefore, but for the provisions of FIRREA and the OTS capital regulation restricting the inclusion of these items in capital—restrictions that violate plaintiffs' agreements with FSLIC and FHLBB—Statesman Bank would satisfy each of the three capital requirements. Accordingly, Statesman Bank is subject to restrictions and penalties relating to FIRREA's capital requirements solely because of the repudiation of FSLIC's and FHLBB's agreements with plaintiffs.

81. On January 5, 1990, Statesman Bank submitted a capital plan together with a proposed modification and extension of the March 1988 acquisition agreements. On March 13, 1990, OTS denied Statesman Bank's capital plan. OTS notified Statesman Bank that it must comply with OTS' policy statements set forth in bulletin RB3a-1, under which Statesman Bank would not be permitted to make any new loans or investments without the prior written approval of the District Director of OTS. After negotiations with the OTS District Director, Statesman Bank was granted only limited exceptions to those restrictions.

82. Under the restrictions outlined above, Statesman Bank was subject to substantial competitive disadvantage in the marketplace for loans deposits.

Statesman Bank—on pain of the full range of regulatory economic sanctions, from cease and desist orders to receivership and liquidation—was subjected not only to OTS's close supervisory scrutiny, but to its direction and control regarding virtually all of its business operations. Statesman Bank's managerial discretion, which has produced a record of conservative, sound and efficient management, was greatly circumscribed. In addition, the collateral consequences of the restrictions imposed by FIRREA and the OTS capital regulation were equally damaging. For example, Statesman Bank's ability to attract and retain deposits, as well as its ability to borrow in capital markets, was impaired. The restrictions also reduced Statesman Bank's ability to generate mortgages and other loans, reduced its access to secondary mortgage markets, and impaired its ability to generate profits. The asset growth restrictions reduced Statesman Bank's ability to obtain the advantages of growth available to thrifts, banks, and other financial institutions competing with it for the provision of mortgages and other loans and services in its market area. Moreover, the restrictions imposed under FIRREA and the OTS capital regulation impaired Statesman Bank's ability to serve the needs of savers and home buyers in its market area. In these and countless other ways, Statesman Bank was denied the benefits of including its supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in capital for purposes of complying with regulatory capital requirements—benefits that plaintiffs contracted for in their agreements with FSLIC and FHLBB.

83. In essence confirming that the purpose of the Statesman Bank acquisition had been frustrated, on July 26, 1990, the Director, OTS concluded that

> the [Statesman Bank] is in an unsafe and unsound condition to transact business due to having substantially insufficient capital in that the [Statesman Bank] has negative tangible capital, and ... the [Statesman Bank] has incurred or is likely to incur losses that will deplete all or substantially all of its capital ...

As a result, the Director, OTS appointed the Resolution Trust Corporation ("RTC") as receiver for Statesman Bank. On that same date, OTS formed a new institution, Statesman Federal Savings Bank, to take over all of the assets and liabilities of Statesman Bank, and appointed RTC as conservator of that new institution. On July 27, 1990, RTC took possession of Statesman Bank. This action caused additional significant harm to the reputation of the SSHC, Statesman Group, and American Life in financial and other communities, and otherwise severely impaired their ability to conduct their operations in a profitable manner free from burdensome and costly government interference.

84. Thus, the repudiation of FSLIC's and FHLBB's contractual promises frustrated the very purpose of the acquisition of Statesman Bank: the conversion of four failed thrifts into a sound, profitable institution serving the financial needs of the community.

85. Prior to the appointment of a receiver for Statesman Bank by OTS, on June 6, 1990, plaintiffs filed a complaint in the United States District Court for the District of Columbia seeking, on contractual and constitutional grounds, to enjoin OTS and FDIC from abrogating their contractual commitments to include supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in regulatory capital, or,

alternatively, to have the transaction rescinded and otherwise restore the parties to the *status quo ante*. On August 15, 1990, plaintiffs dismissed this district court action without prejudice.

COUNT I

86. Plaintiffs incorporate paragraphs 1 through 84.

87. The provisions of FIRREA and the OTS capital regulation restricting the inclusion of supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in Statesman Bank's capital for purposes of satisfying regulatory capital requirements constitute a repudiation and abrogation of plaintiffs' contract rights, as described above, and effect a taking of plaintiffs' property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

COUNT II

88. Plaintiffs incorporate paragraphs 1 through 86.

89. The provisions of FIRREA and the OTS capital regulation restricting the inclusion of supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in Statesman Bank's capital for purposes of satisfying the regulatory capital requirements constitute a repudiation and abrogation of contract rights, as described above, and effect a deprivation of plaintiffs property without due process of law, in violation of the Fifth Amendment to the United States Constitution.

COUNT III

90. Plaintiff incorporate paragraphs 1 through 88.

91. The provisions of FIRREA and the OTS capital regulation restricting the inclusion of supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in Statesman Bank's capital for purposes of satisfying minimum capital requirements constitute a repudiation and breach of plaintiffs' contract rights, as described above, for which plaintiffs are entitled to restitutionary relief.

COUNT IV

92. Plaintiffs incorporate paragraphs 1 through 90.

93. The provisions of the OTS capital regulation restricting the inclusion of the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in Statesman Bank's regulatory tangible capital constitute a repudiation and breach of FSLIC's and FHLBB's obligations under their contracts with plaintiffs, as described above.

COUNT V

94. Plaintiffs incorporate paragraphs 1 through 92.

95. The abrogation of the defendants' contractual agreements by FIRREA and the OTS capital regulation frustrates the entire purpose of plaintiffs' contract with FHLBB and FSLIC for the acquisition of the four thrifts, and deprives plaintiffs of the consideration for which they bargained. Plaintiffs are entitled to rescission of the transaction with defendants, and the return of plaintiffs' investment of $21

million, plus compensation for all monies expended and costs incurred by plaintiffs, and for all benefits conferred upon defendants, through plaintiffs' purchase, operation, and management of the four institutions.

COUNT VI

96. Plaintiffs incorporate paragraphs 1 through 94.

97. Defendants are estopped from asserting or enforcing against plaintiffs the provisions of FIRREA and the OTS capital regulation restricting the inclusion of the supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in Statesman Bank's capital for purposes of satisfying regulatory capital requirements.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

(a) That the Court declare that the provisions of FIRREA and the OTS capital regulation restricting the inclusion of supervisory goodwill, the $21 million capital credit and the $5 million face amount of the Subordinated Debenture in capital for purposes of satisfying Statesman Bank's regulatory capital requirements constitute a repudiation and abrogation of plaintiffs' valid contract rights and effect a taking of plaintiffs' property without just compensation and a deprivation of plaintiffs' property without due process of law, in violation of the Fifth Amendment to the United States Constitution;

(b) That the Court order that the transaction be rescinded and award plaintiffs monetary relief in the

amount of their investment, plus compensation for all monies expended and costs incurred by plaintiffs, and for the value of all benefits conferred on defendants, through plaintiffs' purchase, operation and management of the four thrifts, a total sum in excess of $30 million;

(c) That the Court grant plaintiffs their costs, interest, and attorney's fees as allowed by law; and

(d) That the Court grant such other and further relief as the law and evidence may justify and as the Court may deem just and proper.

Respectfully submitted,

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COMPANY

FEDERAL HOME LOAN BANK BOARD
OFFICE OF EXAMINATIONS AND
SUPERVISION

MEMORANDUM

SP-37a
March 7, 1986

TO: Principal Supervisory Agents

FROM: Francis M. Passarealli

Requests for
Forbearances and
Exceptions to
Filing Require-
ments Regarding
Supervisory
Institutions

Editor's Note: This memorandum constitutes a revision of SP-37 made in order to accommodate amendments to the net worth regulation and to make the language contained herein consistent with the direct investment regulation and R Memorandum 34 ("Level Yield Method of Amortization"). SP-37 is hereby rendered obsolete and is rescinded.

The purpose of the instructions in the attached material is to expedite the processing of supervisory or assisted mergers and acquisitions and to diminish the inordinate amount of staff time presently necessitated to negotiate the terms of forbearance letters with potential acquirers of institutions. Washington

Staff will use these guidelines and the standard forbearance language contained herein. In the interest of consistency and fairness, Supervisory Agents should also use these guidelines where they have a general authorization or delegation to grant forbearance. Potential acquirers should be encouraged to limit forbearance requests to the standardized statements provided in Section I of the memo. They should be advised that requests for forbearances beyond these outlined in Section I will, at a minimum, substantially increase the processing time. Requests for forbearances outlined in Section II will likely be rejected unless they are shown to be key factors in helping to solve exceptionally difficult supervisory cases. Forbearances outlined in Section III will not be granted.

The memorandum is grouped into self-explanatory subjects. The first three deal with forbearances in connection with supervisory mergers, including mergers into a subsidiary of a holding company, and acquisitions of a problem institution either by a holding company or individual(s) without a merger. They are:

I. Stanard forbearances that *will be* granted.
II. Forbearance that *may be* granted on a case-by-case basis if circumstances so justify.
III. Forbearances that *will not be* granted.

The last two subjects cover miscellaneous requirements. They are:

IV. Requests to provide reduced information.
V. Required concluding paragraphs to all forbearance letters.

It should be especially stressed that requests for forbearances, beyond those outlined in Section I, must

be convincingly justified. Blanket requests for forbearances (i.e., all available forbearances) are not acceptable. The basic purpose in granting forbearances is to give realistic incentives to potential acquires of problem institutions. The incentives, however, must be limited to those actually necessary for an acquirer to complete a supervisory merger or acquisition.

This SP memorandum does not cover forbearances appropriate for acquisition of a problem institution by a holding company that is an insured institution.

Francis M. Passarelli
Acting Director

Attachment

cc: Professional Staff—Examinations and Supervision
Office of the FSLIC
Office of the General Counsel

I. Standard forbearances that *will be* granted in connection with supervisory mergers, including mergers with a subsidiary of a holding company, and acquisitions of a problem institution by a holding company or individual(s) without a merger:

Net Worth Requirements
Supervisory Mergers

A-1. Section 563.13 (Regulatory Net Worth Requirement) of the Rules and Regulations for Insurance of Accounts provides in subsection (b)(3)(iii) for the possible exclusion or moderation of the base, amortization, contingency and growth factors of (disappearing institution) by (resulting institution) in computing the net worth requirements of this section provided the merger was instituted for supervisory reasons. Therefore, the Federal Savings and Loan Insurance Corporation will forbear, for a period not to exceed (five) years following consummation of the merger, from exercising its authority, under Section 563.13 of the Rules and Regulations for Insurance of Accounts, for any failure of (resulting institution), to meet the net worth requirements of Section 563.13 arising solely from (1)(a) any increase in the contingency factor attributable to the assets of (disappearing institution(s)) existing at the Effective Date(s), and, (b) any increase in the net growth of (resulting institution) as of the Effective Date(s) by reason of (resulting institution's) assumption of (disappearing institution(s)) liabilities; *or* (2) (resulting institution's) assumption of the net worth deficiency(ies) of disappearing institution(s) as of the Effective Date(s).

Acquisitions by a Holding Company or Individual(s)

A-2. Section 563.13 (Regulatory Net Worth Requirement) of the Rules and Regulations for Insurance of Accounts provides no exceptions in the case of acquisitions which permit the exclusion of scheduled items of an institution in computing the net worth requirements of this section. However, in view of the fact that the acquisition was instituted for supervisory reasons, the Federal Savings and Loan Insurance Corporation will forbear, for a period not to exceed (five) years following consummation of the acquisition, from exercising its authority under Section 563.13 of the Rules and Regulations for Insurance of Accounts, for any failure of (acquired institution) to meet the net worth requirements of Section 563.13 arising solely from an increase in the contingency factor attributable to (acquired institution) at the date of acquisition.

Exclusion of Scheduled Items
Supervisory Mergers

B. The assets acquired by (resulting institution) from (disappearing institution(s)) will be deemed to have been acquired in a merger instituted for supervisory reasons. Therefore, pursuant to any section of the regulations administered by the Federal Home Loan Bank Board where scheduled items are referred to as "assets acquired in a merger instituted for supervisory reason", scheduled items attributable to (disappearing institution(s)) shall be excluded from the computation of scheduled

items in determining whether (resulting institution) meets the requirements of such sections following the effective merger date(s).

II. Forbearances that may be granted in connection with supervisory mergers, including mergers into a subsidiary of a holding company, and acquisitions of a problem institution, either by a holding company or individual(s), without a merger, if circumstances so justify:

Regulations Which Reference Reserve and Net Worth Requirements
Supervisory Mergers

A. For a period of five years following the Effective Date(s), the Board will waive or forbear from enforcement of the reserve or net worth requirements as stated in Insurance Regulation 563.13 provided that the Board may lawfully waive or forbear with respect to such requirements, and provided further that failure to meet the requirements is due to (1)(a) operating losses on acquired assets; (b) capital losses sustained by (resulting institution) upon disposition of acquired assets; (c) acquired assets that are or become scheduled items; and (d) the assumption of (disappearing institution's) liabilities, including averaged liabilities; or (2) (resulting institution's) assumption of (disappearing institution(s')) net worth deficiency(ies) as of the Effective Date(s).

This forbearance generally will be granted where a request demonstrates that without such a forbearance, the resulting institution in a

supervisory merger would be unable to meet, or only marginally meet, the scheduled items and net worth limitations and requirements of the Board's Regulations.

Liquidity Deficiencies
Supervisory Mergers

B-1. For a period of one year following the Effective Date(s), in determining whether a penalty shall be assessed against or paid by (resulting institution) pursuant to Section 523.12 (Deficiencies and Penalties) of the Rules and Regulations for the Federal Home Loan Bank System ("Bank Regulations"), the liquidity requirements of Section 523.11 (Liquidity Requirements) of the Bank Regulations as applied to (resulting institution) shall be reduced by (1) the amount of (disappearing institution(s') liquidity deficiencies existing at the Effective Date(s) and (2) any aggregate net withdrawals (excess of withdrawals over cash savings received) from (disappearing institution(s')) offices after the Effective Date(s).

Acquisitions by a Holding Company or Individual(s)

B-2. For a period of one year following the Effective Date, in determining whether a penalty shall be assessed against or paid by (institution) pursuant to Section 523.12 (Deficiencies and Penalties) of the Rules and Regulations for the Federal Home Loan Bank System ("Bank Regulations"), the liquidity requirements of Section 523.11 (Liquidity Requirements) of the Bank Regulations

as applied to (institution) shall be reduced by (1) the amount of (acquired institution's) liquidity deficiencies existing at the Effective Date and (2) any aggregate net withdrawals (excess of withdrawal over cash savings received) from (acquired institution's) offices after the Effective Date.

References to disappearing institution(s) in items C-D below, include state-chartered associations not previously subject to Federal law, or Federally chartered institutions previously in violtion of Federal law.

Limitation on Service Corporation Investment

C. In determining (resulting institution's) compliance with Section 545.74 (Investments in Service Corporations) of the Federal Regulations, the value of any service corporation acquired by (resulting institution) or by a subsidiary of (resulting institution) in connection with the merger shall not, for a period of five years following the Effective Date, be deemed to be an investment by (resulting institution) in that subsidiary.

This forbearance generally will be granted where a request demonstrates that without such a forbearance the resulting association, in a supervisory merger, would be unable to meet, or only marginally meet, the investment in service corporation limitations of FR 545.74. This waiver will be confined to situations where the disappearing institution(s) had investments in service corporations in excess of that authorized for Federal institutions.

Phase-out of Operations Inconsistent with HOLA

C. (Resulting institution) shall be given a reasonable period of time, but not to exceed ( ) (months/years), to phase out, dispose of or discontinue in an orderly manner, any acquired investments, activities, or operations inconsistent with the Home Owners' Loan Act of 1933 as amended (HOLA), provided that such action is taken at the earliest possible date without material loss to (resulting institution).

This forbearance generally will be granted where a request from an acquiring Federal association demonstrates that the disappearing association(s) in a supervisory merger had investments and/or engaged in activities which are not authorized by the HOLA.

Unauthorized Service Corporation Activities

D. (Resulting institution) shall not for a period not to exceed ( ) years, be deemed in violation of any of the provisions of Section 545.74 (Service Corporations) of the Rules and Regulations for the Federal Savings and Loan System by reason that any activities of a service corporation acquired as part of the merger(s), at or before the effective date(s), are not approved or authorized by the Home Owners' Loan Act of 1933, as amended.

This forbearance geneally will be granted where a request from an acquiring Federal association demonstrates that the disappearing association(s) in a supervisory merger had a service corporation or subsidiary which engaged in activities not authorized by FR 545.74 or by the HOLA.

Building Investment

E. For a period of five years after the Effective Date(s), for purposes of calculating (resulting institution's) building investment under Section 545.77 (Real Estate for Office and Related Facilities) of the Federal Regulations, all building investments in (disappearing institution(s)) may be excluded.

This forbearance generally will be granted where a request from an acquiring Federal association demonstrates that without such a forbearance, the resulting Federal association would be unable to meet, or only marginally meet, the investment limitations contained in FR 545.77.

Holding Company Net Worth Requirements
Supervisory Mergers

F-1. For the purpose of calculating any holding company net worth maintenance requirements of (Holding Company) for (resulting institution), the Board will exclude, for a period of five years, the asset and liability balances of (disappearing institution(s)).

This forbearance is applicable to cases where a holding company has a net worth maintenance requirement for a subsidiary institution which is merging with a supervisory case. This forebearance will be confined to supervisory mergers where the acquired association is a very serious supervisory problem.

Acquisitions by a Holding Company or Individual(s)

F-2. There is no standard forbearance language exempting acquiring holding companies or individuals from maintaining net worth. This is because

it is OES policy to mandate that new acquirers satisfy the regulatory net worth requirement with respect to insured subsidiaries. Only in the most unusual circumstanes will any modification of this requirement be considered.

Divided Limitations

Supervisory Mergers and Acquisitions by a Holding Company or Individual(s)

G. The Board may eliminate the 50% of net income dividend limitation for (resulting or acquired institution) which is controlled by (holding company). The limitation may be waived only where dividends are going to service holding company debt.

This forbearance will rarely be granted, and when granted, will be confined to supervisory mergers or acquisitions where the acquired institution is a very serious supervisory problem. Any request for elimination of the 50% of net income dividend limitation must be supported by convincing evidence that the acquiring holding company is strongly capitalized and will agree to maintain the net worth of the subsidiary insured institution at the required regulatory level as stated in Section 563.13.

(It should be noted that eligible dividends are calculated based on net income from the time that the holding company acquired stock of an institution. "Acquired" means the date of the consummation of the purchase of the association's stock by the holding company. Preacquisition earnings may not be distributed.)

Preapproval of Debts

H. The Board will allow for preapproval of debt in accordance with Section 408(g) (Holding Company Indebtedness) of the National Housing Act and Section 584.6 (Holding Company Indebtedness) of the Holding Company Regulations. This approval will be included in the Resolution approving the acquisition of the supervisory institution. The language of the Resolution with respect to the preapprcval of debt is as follows:

Resolved, that the Bank Board, pursuant to § 408(g) of the NHA, 12 U.S.C. § 1730a(g) (1976) and § 584.6 of the Holding Company Regulations (12 C.F.R. § 584.6) hereby approves (Acquiring Company(ies) and its (their)) subsidiaries that are not insured institutions under § 408(a)(1)(a) of the National Housing Act to incur future indebtedness without further application to the FSLIC, provided that:

(1) (Acquiring Company(ies) shall stipulate, in a form satisfactory to the supervising agent, that (a) no later than forty-five calendar days prior to the close of its fiscal year, (acquiring Company(ies)) shall submit to the supervisory agent, with copies to the Office of Examinations and Supervision, an annual debt budget for the following fiscal year for (Acquiring Company(ies) and its (their)) subsidiaries that are not insured institutions under § 408 (a)(1)(a) of the National Housing Act, prepared both on a consolidated (excluding any insured subsidiary) and unconsolidated basis and in a form satisfactory to the supervisory agent; and (b) (Acquiring Company(ies) and its (their)) subsidiaries that are not insured institutions under

§ 408(a)(1)(a) of the National Housing Act will comply with all covenants in their debt instruments and agreements, and any default with regard to such convenants will be promptly cured within thirty days or will be reported to the supervisory agent; and

(2) The supervisory agent may, within ten calendar days of receipt of the annual debt budget, request additional information for (Acquiring Company(ies)). The annual debt budget shall be deemed complete when all additional information requested by the supervisory agent has been received, or, if no additional information is requested, on the date the annual debt budget is received. If the supervisory agent does not object in writing to the annual debt budget, or to any additional information submitted in connection therewith, within thirty calendar days following the date on which the annual debt budget is complete, the annual debt budget shall be deemed approved and (Acquiring Company(ies) and its (their)) subsidiaries that are not insured institutions under § 408(a)(1)(a) of the National Housing Act shall have the right to issue, sell, renew, guarantee, or assume debt as set forth in the annual debt budget without any further filing or application with respect thereto; and

(3) (Acquiring Company(ies)) shall, prior to the issuance, sale, renewal, guarante or assumption of debt in excess of the amounts set forth in the annual debt budget, file an application, in a form satisfactory to the supervisory agent, with copies to the Office of Examinations and Supervision, for authority to exceed their annual debt budgets. If the supervisory agent does not object in writing

within thirty calendar days following the date the application is complete, which date shall be determined in the same manner as set forth in the immediately preceding paragraph, the application shall be deemed approved; and

(4) The FSLIC may terminate the approval given pursuant to § 408(g) of the NHA and § 584.6 of the Holding Company Regulations, or may amend the terms of such approval as set forth in this Resolution, for good and reasonable cause after providing (Acquiring Company(ies)) with notice and an opportunity for response.

The request generally will be granted where the holding company is a financially strong regulated financial institution. Other types of holding companies will be considered for preapproval of debt on a case basis.

Accounting
Supervisory Mergers

I-1. In connection with supervisory mergers, the resulting institution may request forbearances identified below as SM-1, SM-2, SM-3 or any combination of these forbearances or, as an alternative, request forbearance SM-4. Selection of alternative SM-4 requires the inclusions of SM-6 in the forbearance letter. If forbearances SM-1, SM-2 and/or SM-3 are granted, item SM-5 will also be included in the forbearance letter. The request for forbearances SM-1, SM-2 and/or SM-3 will determine which of the subsections of SM-5 are included. The overall matching is as follows:

Forbearrance No.	*Subsection of Forbearance SM-5 or SM-6*
SM-1	(a)
SM-2	(b)
SM-3	(c)
SM-4	SM-6

An example of the application of the above would be where a request is made for forbearances SM-1 and SM-3. In this case, subsections (a) and (c) would be added to the basic paragraph continued in SM-5.

SM-1. It is the Corporation's intention that the cash contribution to be made to (resulting institution) pursuant to an assistance agreement to be entered into between the FSLIC and (resulting institution) is to be a credit to (resulting institution's) regulatory net worth; therefore, for regulatory accounting purposes, (resulting institution) may book such contribution as a direct addition to its net worth.

This forbearance generally will be granted upon the request of the resulting institution in a supervisory merger.

SM-2. For purposes of reporting to the Board, the value of any unidentifiable intangible assets resulting from accounting for the merger in accordance with the purchase method may be amortized by (resulting institution) over a period not to exceed ( ) years by the straight line method.

This forbearrance generally will be granted upon the request of the resulting institution in a supervisory merger.

SM-3. For purposes of reporting to the Board, any discount, arising from the adjustment of (disappearing institution's) mortgage portfolio to its fair value, shall be amortized to income by the level yield method assuming contractually required payments will be received for ( ) years, and the remaining balance will be repaid at the end of the ( )th year or by the level yield method over the average remaining live of the acquired portfolio, with the discount adjusted annually t reflect the actual prepayment experience of the portfolio.

This forbearance generally will be granted upon the request of the resulting institution in a supervisory merger.

SM-4. For purposes of reporting to the Board, (resulting institution's) board of directors shall, by appropriate resolution adopted within ( ) days following the effective date(s) of the merger with (disappearing institution), elect to account for the merger, in accordance with the purchase method of

accounting under generally accepted accounting principles (GAAP), or, alternatively, to apply the purchase method, except that any FSLIC assistance received in connection with the merger may be credited directly to regulatory net worth and the value assigned to any unidentifiable intangible assets shall be amortized by the straight line method over a period not to exceed ( ) years.

This forbearance generally will be granted upon the request of the resulting institution in a supervisory merger when the accounting for the merger has not been addressed in the negotiations.

SM-5. Not later than ( ) days following the effective date(s) of the merger, (resulting institution) shall submit to the Supervisory Agent an independent certified public accountant's opinion that (resulting institution) has accounted for the merger in accordance with generally accepted accounting principles except that as herein provided by the Board, for purposes of reporting to the Board: (a) the cash contribution by the FSLIC to (rsulting institution) with respect to (disappearing institution(s)) pursuant to the Assistance Agreement shall be deemed a contribution to regulatory net worth, and may be booked as a direct credit to (resulting institution), (b) the value of any unidentifiable intangible assets resulting from their merger may be amortized by (resulting institution) over a period not to exceed ( ) years by the straight line method, and (c) any discount arising from adjusting the mortgage loan portfolio to its face value shall be amortized to income by the level yield method assuming contractual monthly payments for a ( ) year period and repayment of the remaining balance at the end of the ( ) year or by the level yield method over the average remaining live of the acquired portfolio, with the discount adjusted annualy to reflect the actual prepayment experience of the portfolio.

SM-6. Not later than ( ) days following the Effective Date(s) of the merger, (resulting institution) shall submit to the Supervisory Agent an independent certified public accountant's opinion that (resulting institution) has accounted for the merger in accordance with generally accepted accounting principles ("GAAP") except that as herein provided by the Board, and pursuant to an election by (resulting institution's) board of directors, for purposes of reporting to the Board: (a) the cash contribution by the FSLIC to (resulting institution) with respect to (disappearing institution(s)) pursuant to the Assistance Agreement shall be deemed a contribution to regulatory net worth and may be booked as a direct credit to (resulting institution), (b) the value of any unidentifiable intangible assets resulting from their merger may be amortized by (resulting institution) over a period not to exceed ( ) years by the straight line method, and (c) any discount arising from adjusting the mortgage loan portfolio to its face value shall be amortized to income by the level yield method assuming contractual monthly payments for a ( ) year period and repayment of the remaining balance at the

end of the ( )th year or by the level yield method over the average remaining live of the acquired portfolio, with the discount adjusted annually to reflect the actual prepayment experience of the portfolio.

Acquisitions by a Holding Company or Individual(s)

I-2 In connection with acquisitions by a holding company or individual(s), or any other entity, the use of push-down accounting will be permitted to the extent authorized by GES Memorandum R-55, dated January 17, 1983, or as may be subsequently amended. As stated in R-55, appropriate evidence must be supplied by an independent public accountant that both the establishment of a new basis of accounting at the time of the acquisition and the current use of push-down accounting are in conformity with GAAP.

Where push-down accounting in authorized, the institution may request forbearances identified below as HC/I-1, HC/I-2, HC/I-3 and HC/I-4, or any combination of these forbearances. Forbearance HC/I-1 serves as a prerequisite to the granting of forbearances HC/I-2, HC/I-3, and HC/I-4, and, therefore, of necessity, must be part of any request for accounting forbearances.

The selection of any of these forbearances requires the addition of a subsection from HC/I-5. The matching is as follows:

Forbearance No.	*Subsection of Forbearance HC/I-5*
HC/I-1	(a)
HC/I-2	(b)
HC/I-3	(c)
HC/I-4	(d)

An example of the application of the above would be where a request is made for forbearances HC/I-1 and HC/I-3. In this case, subsections (a) and (c) would be added to the basic paragraph continued in HC/I-5.

HC/I-1. For the purposes of reporting to the Board, with respect to the books and records of (institution), push-down accounting shall be used to record the purchase of (institution's) capital stock.

HC/I-2. It is the Corporation's intention that the cash contribution to be made to (institution) pursuant to an Assistance Agreement to be entered into between the FSLIC and (institution) is to be a credit to (institution's) regulatory net worth; therefore, for regulatory accounting purposes, (institution) may book such contributions as a direct addition to its net worth.

HC/I-3. For purposes of reporting to the Board, the value of any intangible asset resulting from the application of push-down accounting in accounting for the purchase, may be amortized by (institution) over a period not to exceed ( ) years by the straight line method.

HC/I-4. For purposes of reporting to the Board, any discount arising from the adjustment of the mortgage loan portfolio of (institution) to its fair value shall be amortized to income by the level yield method assuming contractually required payments will be received for ( ) years; and the remaining balance will be repaid at the end of the ( )th year or by the level yield method over the average remaining live of the acquired portfolio, with the discount adjusted annually to reflect the actual prepayment experiences of the portfolio.

HC/I-5. Not later than ( ) days following the Effective Date(s) of the acquisition, (institution) shall submit to the Supervisory Agent an opinion of independent certified public accountants that (institution) has accounted for the transaction in accordance with generally accepted accounting principles ("GAAP") except that as herein provided by the Board, for purposes of reporting to the Board: (a) "push-down" accounting shall be used to reflect the acquisition on (institution's) books; (b) the cash contribution by the FSLIC to (institution) pursuant to the Assistance Agreement shall be deemed a contribution to regulatory net worth, and may be booked as a direct credit to (institution); (c) the value of any resulting unidentifiable intangible asset may be amortized by (institution) over a period of ( ) years by the straight line method; and (d) any discount arising from adjusting the mortgage loan portfolio to its face value shall be amortized to income by the level yield method assuming contractual monthly

payments for a ( ) year period and repayment of the remaining balance at the end of the ( )th year or by the level yield method over the average remaining life of the acquired portfolio, with the discount adjusted annually to reflect the actual prepayment experience of the portfolio.

III. Forbearances that *will not be* granted in connection with supervisory mergers or acquisitons by a holding company or individual(s):

Transactions with Affiliates

A. Preapproval of transactions with affiliates under Section 408(d) (Prohibited Transactions) of the National Housing Act and Section 584.3 (Transactions with Affiliates) of the Holding Company Regulations.

Interlocks

B. Requests for FHLBB guaranteed preapproval of any interlocks covered by Part 563f (Management Official Interlocks) of the Insurance Regulations.

[PAGE MISSING FROM ORIGINAL AND UNATTAINABLE]

paragraphs ____ through ____. Other than the actions to enforce the regulatory requirements waived in accordance with paragraphs ____ through ____ and the statutory provisions authorizing imposition of the waived requirements, insofar as such requirements are waived, the Board and the Federal Servings and Loan Insurance Corporation expressly reserve all of their statutory rights and powers with respect to (institution) including, without limitation, those under Section

5 of the Home Owners' Loan Act of 1933 and Sections 406 and 407 of the National Housing Act.

OTHER ASSETS (Cont'd)

Deferred Net Losses (Gains) on: – Lines A520 and A530

If gains exceed losses (resulting in a net credit), enclose the net amount in brackets [ ].

Line A520 – Loans Sold

Record the net of all deferred losses and gains on the sale of loans as required by Regulation 563c.14.

Line A530 – Other Assets Sold

Record on this line the net of all deferred losses and gains on the sale of other assets as defined by Regulation 563c.14. This includes such items as: (1) redeemable ground rent leases; (2) mortgage-related securities; (3) preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years; and (4) debt securities that do not qualify as liquid assets under Regulation 523.10(g) because of their maturities or that have remaining terms to maturity of at least five years. *Do not report* deferred profits on sale of real estate that should be reported on Line A580 (Other Assets).

Intangible Assets:- Lines A542 and A544

Line A542 – Purchased Loan Servicing

Report on this line the unamortized cost of purchased loan servicing rights. The amortization

of purchased loan servicing rights is deducted from Line D090 (Loan Servicing Fees).

Line A544 – Goodwill and Other

Report on this line the total amount of unamortized goodwill and intangibles other than purchased loan servicing reportable on Line A542. Include goodwill and other identified intangibles that originated from the application of purchase or pushdown accounting. For pushdown accounting, see Bank Board memorandum R-55a. The amortization of goodwill and other intangibles is reported on Line E110 (Amortization of Goodwill). One-time writeoffs of goodwill are reported on E310 (Other Nonoperating Expense).

REGULATORY CAPITAL EXCLUDING GENERAL LOAN-LOSS RESERVES – Lines C012 thru C115

General Loan-Loss Reserves are discussed in the instructions for Line C115 (Retained Earnings).

Preferred Stock: – Lines C012 and C014

Include on the appropriate line, stock issued by the institution that is guaranteed priority over common stock in liquidation and in the payment of dividends by the institution's corporate charter and that qualifies as regulatory capital as defined in Regulations 561.13 and 563.7-5. Exclude nonqualifying preferred stock and preferred stock issued by a finance subsidiary, reportable on Line B100 (Other Borrowings).

Line C012 – Perpetual

Report here preferred stock that has no stated maturity and cannot be redeemed except at the option of the issuer. Perpetual preferred stock also includes preferred stock that is convertible into common stock.

Line C014 – Other Qualifying

Report on this line qualified nonpermanent preferred stock (e.g., preferred stock that has a stated maturity, a required redemption provision, or a redemption that is at the option of the holder).

Line C020 –Permanent, Reserve, or Guaranty Stock

Enter the par value of all *outstanding* permanent, reserve, or guaranty stock issued by the institution. Contributed capital in excess of par value net of the cost of issuing stock is to be reported on Line C030 (Contributed Capital). The par value of treasury stock (stock reacquired by the institution) must be deducted from this line to obtain the outstanding stock of the institution (that amount issued to others).

Line C030 – Contributed Capital

Report paid-in capital in excess of par value net of the cost of issuing stock. Generally, paid-in capital arises from the sale of capital stock for an amount in excess of par value. Deduct from this line the amount paid for stock reacquired by the institution (treasury stock) in excess of its par value. Also includable on this line are (1) capital contributions by the stockholders and/or holding company not related to the purchase of stock; and

(2) permanent capital contributions by the FSLIC not in the form of the capital instruments reportable on Lines C070 thru C090.

Line C040 – Qualifying Mutual Capital Certificates

Report on this line all outstanding mutual capital certificates that quality as equity capital. Non-qualified mutual capital certificates must be included on Line B180 (Other Liabilities). Refer to Regulation 563.7-4.

Line C050 – Qualifying Subordinated Debentures

Enter debt claims represented by subordinated debentures issued by the institution that qualify for inclusion in regulatory capital in accordance with Regulation 561.13. Accrued interest payable is reportable on Line B110 (Accrued Interest Payable). Interest expense on subordinated debentures is reportable on Line E190 (INTEREST CHARGES ON: Subordinated Debentures).

Lined C060 – Appraised Equity Capital

Report on this line the excess of appraised value over (1) net book value of office land, buildings and improvements, and eligible leasehold improvements, owned by the insured institution or any of its subsidiaries; and (2) the deferred profit from a sale with leaseback of formerly owned office properties. The amount entered on this line must equal the sum of Lines A430 and A500 (Appraisal Increment). The appraised value is equal to the "one time only" appraisal permitted by the Principal Supervisory Agent as provided for in Regulation 563.13(c). The portion of appraised equity capital attributable to unamortized deferred profit includes only that allowable

under Regulation 563.13(c) and must be adjusted to reflect the current level of unamortized deferred profits. The amount reported on this line must be reduced for sales, other dispositions, and the aforementioned amortization of deferred profits.

Line C070 – Net Worth Certificates

Include on this line Net Worth Certificates (NWCs) issued to the FSLIC.

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PROPOSAL FOR THE ACQUISITION OF

FIRST FEDERATED SAVINGS BANK, WEST PALM BEACH, FLORIDA
FIRST FEDERAL SAVINGS BANK, WATERLOO, IOWA
PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, WATERLOO, IOWA
THE PERPETUAL SAVINGS AND LOAN ASSOCIATION, WATERLOO, IOWA

January 1988

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ACQUISITION PROPOSAL

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ACQUISITION PROPOSAL

I. *Introductory Statement*

The Statesman Group, Inc., ("Statesman") headquartered in Des Moines, Iowa, proposes to acquire substantially all of the assets and liabilities of First Federated Savings Bank, West Palm Beach, Florida; First Federal Savings Bank, Waterloo, Iowa; Peoples Federal Savings and Loan Association, Waterloo, Iowa, and The Perpetual Savings and Loan Association, Waterloo, Iowa, (collectively the "Associations") through a supervisory acquisition assisted by the Federal Savings and Loan Insurance Corporation ("FSLIC").

II. *Description of The Statesman Group, Inc.*

Statesman is a financial services holding company which, through its subsidiaries, engages primarily in the business of life insurance and, to a lesser extent, in the businesses of investment banking and retail brokerage and property-casualty insurance. In addition, in January, 1987, Statesman, through a 60%-owned subsidiary, Statesman Mortgage Holding Company, purchased all of the outstanding stock of a mortgage company, Statesman Mortgage Company. An organizational chart describing Statesman's subsidiary and affiliated companies is attached as Appendix A. Statesman was incorporated in 1959 and its common stock is traded on a national over-the-counter market.

III. *Description of Acquiring Entity*

Statesman intends to establish and incorporate a unitary savings and loan holding company which, for

purpose of identification, shall be referred to herein as "Statesman Savings Holding Corp." or "SSHC." The initial capital infusion into SSHC shall be $21,000,000, of which 60% ($12,600,000) shall be represented by preferred stock issued by Statesman to SSHC in exchange for preferred stock issued by SSHC to Statesman. The other 40% ($8,400,000) shall be in the form of cash contributed by American Life and Casualty Insurance Company ("American Life"), a wholly-owned Statesman subsidiary, in exchange for voting common stock issued by SSHC to American Life. As a result, American Life will have voting control of SSHC.

SSHC will in turn establish and incorporate a wholly-owned subsidiary federal savings bank, and for purposes of references herein shall be identified as "Statesman Bank for Savings, FSB" or "SBS." SSHC will contribute all of the Statesman preferred stock and all of the cash acquired from American Life to SBS in exchange for SBS common stock, thereby capitalizing SBS in the amount of $21,000,000. Thus SBS would be the acquiring corporate entity of the assets and liabilities of the four associations which are the subject of the bid proposal. However, references in this bid proposal and the Business Plan may refer to Statesman as the acquirer, it being understood that Statesman is submitting this bid and intends that the acquisition occur in the manner set forth herein. It is further understood that FSLIC shall deliver said assets and liabilities on a "turnkey" basis, with FSLIC providing for the combining of the assets and liabilities of the Associations prior to the acquisition, establishment and incorporation of SSHC and SBS, transfer of assets and liabilities to SBS, and recording and filing all documents in accordance with various state and federal requirements, all at the cost of FSLIC.

IV. *Bid Proposal*

Statesman proposes to purchase the four associations identified herein under the following terms and conditions:

1. *Subsidiaries of Associations.* All subsidiary corporations of the four Associations and their assets, including mortgage servicing rights, shall be included as assets included in this transaction. The stock of such subsidiaries (or the assets and remaining liabilities in the event of dissolution prior to acquisition) shall be transferred to SBS. FSLIC will cause and ensure the transfer of all such mortgage servicing rights to SBS or a subsidiary of Statesman which is duly qualified to service such mortgages. It is a condition of this proposal that there be no material change (more than 15%) in the total dollar volume of the mortgage servicing portfolio between September 30, 1987 and the date of acquisition.

2. *Capital Infusion by Acquirer.* In the manner described in Section III above, Statesman will cause SBS to have a capital infusion of $21,000,000, consisting of 40% ($8,400,000) cash and 60% ($12,600,000) Statesman preferred stock.

3. *Additional Contribution by Statesman.* As additional consideration for the acquisition of the Associations, SBS agrees to assume losses arising from disposition and/or maintaining assets other than Covered Assets, as defined below, acquired in the transaction, which are estimated to be approximately $26,000,000.

4. *FSLIC Assistance Required.* FSLIC assistance is required in this transaction. The forms of assistance sought and required are as follows:

a. *Cash and Promissory Note.* FSLIC will contribute cash and a note receivable in an

amount, as of the date of acquisition, which is equal to the combined deficit of the Associations, adjusted for:

(i). Increase: Write-off of goodwill, other intangibles, deferred losses and appraised equity capital;

(ii) Decrease: All valuation allowances (excluding allowances for one to four-family dwelling units, owned or mortgaged) adjusted for uncollectable accrued interest receivable; and

(iii) Increase: Equity in the adjusted losses of Federated Financial Corporation, the wholly-owned mortgage banking subsidiary of First Federated Savings Bank.

Thirty percent (30%) of this contribution shall be payable to SBS in the form of cash within five (5) days of the date of acquisition. Seventy percent (70%) of this amount shall be payable in the form of a promissory note executed and delivered within five (5) days of the date of acquisition. It is projected that the principal amount of this contribution as at December 31, 1987 will exceed $115,000,000, and will increase between that date and the actual date of acquisition. The FSLIC note shall bear variable interest, adjusted quarterly, at a rate equal to the Eighth District cost of funds plus 200 basis points. The note will be amortized over five years and principal and interest payments shall be paid quarterly and may be prepayable without penalty at FSLIC's option.

b. *Losses on Covered Assets.* FSLIC will pay to SBS quarterly cash payments equal to 93 percent of losses incurred on the disposition of Covered Assets during the prior quarter for a period of five (5) years from the date of

acquisition. Covered Assets are defined as follows:

(i) Real Estate Owned, Real Estate Held for Investment, and Real Estate in Judgment, excluding in all three categories one to four family dwelling units.

(ii) The principal on all mortgage and non-mortgage loans which at the date of acquisition are classified or ninety days or more delinquent and the principal and accrued interest receivable on mortgage and non-mortgage loans which become classified or ninety days or more delinquent within two years of the acquisition, excluding loans secured by first liens or first mortgages on one to four-family dwelling units and direct or participation loans with a total balance of $50,000 or less. (If a loan has an SBS participation under a $50,000 balance but the total balance exceeds $50,000, the loan will be a covered asset provided it is not on a one to four family dwelling unit secured by a SBS first mortgage.)

(iii) Investments in and loans to subsidiaries. Losses shall be the difference between the carrying (book) value of Covered Assets (plus accrued interest if applicable under subparagraph (ii) immediately above) before considering recorded loss allowances, and the net sales proceeds realized by SBS on the disposition of such assets.

c. *Yield Maintenance.* FSLIC will provide cash payments on a quarterly basis for spread and yield maintenance on Covered Assets in an amount equal to the Eight District cost of funds plus 225 basis points.

d. *Indemnifications.* FSLIC will indemnify Statesman, its subsidiaries, affiliates, officers,

directors and employees for a period of five (5) years for and against:

(i) All undisclosed or unrecorded (not booked) liabilities of the Associations, their subsidiaries and affiliates, in their respective September 30, 1987 financial statements;

(ii) All claims not reserved for and subsequently asserted against the Associations, their subsidiaries or affiliates, or Statesman, its subsidiaries, officers and directors, as the Acquirer and successor of the Associations;

(iii) Litigation brought to challenge or set aside the transaction on the basis of any alleged illegal action by the Federal Home Loan Bank Board or FSLIC; and

(iv) Any claims based on ERISA rights and any unfunded employment and/or severance benefit plans, policies, or contracts, other employee benefit contracts, employment contracts, and pension plans, with employees or ex-employees of the Associations or any of their subsidiaries, which exist at, or existed prior to the time of acquisition.

5. *Regulatory Considerations and Forbearances.* As a part of the proposed acquisition, certain regulatory forbearances and considerations will be granted or procured by FSLIC as identified below:

a. For regulatory purposes, with respect to the books and records of SBS, push-down accounting shall be used to record the purchase of SBS's capital stock by SSHC. Twenty one million dollars of the cash contribution to be made to SBS pursuant to an assistance agreement to be entered into between the FSLIC and Statesman is to be a credit to SBS's regulatory

capital; therefore, for regulatory accounting purposes, SBS will book such contribution as a direct addition to its net worth. Accordingly, immediately after the acquisition, the regulatory capital of SBS will be $42,000,000 which will consist of $21,000,000 in capital infused by SSHC, plus $21,000,000 in capital contributed by the FSLIC which will be treated as regulatory capital. Not later than 30 days following the acquisition, SBS shall submit to the Supervisory Agent an opinion of independent certified public accountants that SBS has accounted for the transaction in accordance with generally accepted accounting principles ("GAAP") including the use of "push down" accounting, except that as provided by the Board, for purposes of reporting to the Board, twenty-one million dollars of the cash contribution by the FSLIC to SBS pursuant to the assistance agreement shall be deemed a contribution to regulatory net worth and will be booked as a direct credit to SBS.

b. The FSLIC will permit Statesman and SSHC to enter into a capital maintenance agreement for SBS that is limited to:

(i) an agreement to cause the regulatory capital of SBS to be maintained at a level consistent with that required by 12 C.F.R. 563.13(b) as now or hereinafter in effect, and will infuse sufficient capital, in the same ratio and form as the initial contribution as set forth in Section IV, paragraph 2 above, to effect compliance with such requirement, *provided* that the aggregate amount of the combined obligation of Statesman, SSHC and American Life shall not exceed an amount equal to $4 million.

(ii) an agreement that in the event SBS's ratio of regulatory capital to total liabilities at

the end of any given calendar quarter falls below 2 percent, and Statesman and SSHC are unwilling and/or unable to infuse sufficient additional equity capital to restore SBS's ratio of regulatory capital to total liabilities to 2%, regardless of the amount of equity capital previously infused into SBS pursuant to the aforementioned agreement, the FSLIC will have the right to vote the securities acquired by Statesman and SSHC, remove SBS's board of directors, and/or dispose of any or all of the voting securities of SBS owned by Statesman, American Life or SSHC.

This proposed agreement is intended to satisfy two of Statesman's concerns. First, as a diversified company, Statesman is concerned to ensure that its debt rating is not downgraded as a result of the company becoming subject to an unlimited contingent obligation. Second, as a matter of business judgment, Statesman is equally concerned by the prospect of becoming subject to an unlimited capital guarantee. This proposed capital agreement is based upon the agreements used in certain acquisitions of healthy thrifts by diversified acquirers, such as Ford, Fuqua, and Temple-Inland and is modified to reflect the fact that this is a supervisory transaction.

(c) The FSLIC will give permanent and continuing approval to the issuance of debt by Statesman and its affiliates (or waive the debt requirement under section 408(m) of the National Housing Act), so long as the regulatory capital of SBS meets the amount required at the time the debt is issued. At the time Statesman (with approximately one billion dollars in assets), acquires SBS (with approximately $700 million in assets), it is anticipated that Statesman will

qualify as a diversified savings and loan holding company and will not be subject to the debt limitations of 12 U.S.C. 1730a or 12 C.F.R. 584. However, as demonstrated in the Business Plan, Statesman plans to transform SBS into a profitable and growing institution. The successful operation and growth of SBS could cause Statesman to become a nondiversified institution subject to the debt restrictions. Due to the peculiarities of the insurance industry and the wide diversification of Statesman's financial service activities, Statesman's debt requirements are highly unpredictable and variable, and the standard prior-approval procedure would therefore pose a significant hardship.

A waiver or prior approval for Statesman's debt would not compromise the regulatory objectives of the National Housing Act or the FSLIC. The purpose of the debt limitation is to ensure that savings and loan holding companies do not become over leveraged and seek to drain assets from a subsidiary insured institution. Since as part of this acquisition Statesman will agree to maintain the capital of the acquired institution at certain levels, and Statesman has not requested a forbearance from the standard limitation of dividends to 50% of net earnings, the FSLIC will have no need to rely upon the cumbersome procedures for debt approval in order to protect the capital of SBS. Furthermore, Statesman operates in the highly regulated and conservative insurance industry where regulators impose capital requirements on its subsidiaries. (Statesman's broker-dealer subsidiary is likewise subject to capital requirements). Consequently, there is no regulatory purpose to be served by requiring such prior approval for debt.

d. The FSLIC will authorize the acquisition under section 408(m) of the National Housing Act, 12 U.S.C. 1730a, will determine under such authority that Statesman and its affiliates are exempt from the operation of section 408(p) of the National Housing Act, 12 U.S.C. 1730(p), with respect to the cross-marketing of products or services between SBS and Statesman, its subsidiaries or its affiliates, and will confirm that such sales, as described herein, are consistent with section 408(d) of the National Housing Act.

Statesman is a leading provider of life and property and casualty insurance products and services, and currently markets more annuities and other insurance products and services through savings and loan associations than through any other form of retail outlet. As described in the Business Plan, Statesman would intend to sell such insurance products and services through the facilities of SBS. Under this arrangement, insurance products and services would be sold on the premises and by the employees of SBS, and for these marketing efforts the institution and/or its employees would receive payments from the Statesman insurance affiliates at some contractually determined rate.

Under the arrangement outlined above, marketing services would be provided by SBS and its employees on behalf of Statesman. Such marketing arrangements would not violate the affiliate-transaction provisions of section 408(d) of the National Housing Act, 12 U.S.C. 1730(d), and regulations thereunder, nor violate the affiliated-party regulations found in subchapter D of the Board's regulations because Statesman and its insurance affiliates would provide no services to,

and receive no payments for services to, SBS. Likewise, while Statesman and its subsidiaries would intend to deposit funds in SBS, such deposits cannot violate the prohibitions against maintaining compensating balances because the deposits will be made in, rather than by, SBS. Statesman requests formal confirmation of these conclusions.

In addition, section 408(p) of the National Housing Act, 12 U.S.C. 1730(p), as recently added by the Competitive Equality Banking Act of 1987, generally forbids an insured institution which is a subsidiary of a diversified savings and loan holding company from offering or marketing products or services of an affiliate that are not permissible for bank holding companies to provide under section 4(c)(8) of the Bank Holding Company Act, or from offering or marketing its own such products or services through an affiliate. Under the recently re-enacted section 408(m) of the National Housing Act, 12 U.S.C. 1730a(m), the FSLIC with certain exceptions is permitted to authorize a supervisory acquisition "notwithstanding any provisions of the laws or constitution of any State or any provision of Federal law." The exceptions do not include the cross-marketing prohibitions of section 408(p). Consequently the FSLIC is authorized under section 408(m) to provide relief from the section 408(p) prohibitions.

e. The acquisitions will occur pursuant to FSLIC authorization under section 408(m) of the National Housing Act, 12 U.S.C. 1730a, and the FSLIC will affirmatively find that such authorization pre-empts the laws of any state that would limit or preclude the affiliation of SBS and

Statesman or any of its insurance affiliates or would, by reason of such affiliation, prohibit the sale of insurance by Statesman, its insurance affiliates or agents.

Statesman's principal business is insurance which is provided by companies organized in several jurisdictions and sold by agents located in some 47 states. Various states prohibit the affiliation of insurance companies and depository institutions or prohibit the sale of insurance by agents of companies with such affiliations. The federal pre-emption of such states limits is a necessary prerequisite to Statesman's ability to continue to conduct its insurance business. The FSLIC's authority in this regard under section 408(m) was recently clarified by Congress. *See* H.R. Rep. No. 261, 100th Cong., 1st Sess. 140.

f. The acquisition will occur pursuant to authorization under section 408(m) of the National Housing Act, 12 U.S.C. 1730a, and that the FSLIC will find that the affiliation of SBS and Statesman's broker/dealer subsidiary, R.G. Dickinson & Co. is not prohibited by section 408(r) of the National Housing Act, 12 U.S.C. 1730a(r). In this connection, subsection 408(r)(2)(D) provides an exception from the prohibition for an affiliation that results from an acquisition under section 408(m) of an institution (such as SBS) with total assets of $500 million or more at the time of the acquisition. FSLIC will assure Statesman that it can continue to simultaneously own SBS and R.G. Dickinson & Co.

g. The FSLIC will require that the acquisition of the shares of the newly converted institution, SBS (and therefore the acquisition of the shares of its parent companies, SSHC and Statesman),

be subject to the limitations found in section 563b.3(i)(3) of the FSLIC's conversion regulations, 12 C.F.R. 563b.3(i)(3), for at least 18 months.

The FSLIC's conversion regulations specifically provide that the restriction of section 563b.3(i)(3) on the shares of a converted thrift will be applied to the stock of a thrift organized to acquire an insolvent thrift in a voluntary supervisory conversion. 12 C.F.R. 563b.10(c)(2). The Board has indicated that restrictions would likewise be applicable to the parent of the resulting thrift. *See* 51 Fed. Reg. 40137 (1986). The regulation provides that section 563b.3(i)(3) shall be applicable for eighteen months in the case of the acquisition of an insolvent institution with assets of between $500 and $750 million, such as SBS. In the case of the involuntary conversion of an insolvent institution under section 408(m) of the National Housing Act, the FSLIC may require, as a condition of its authorization, that similar limits be imposed on the shares of SBS, and thereby SSHC and Statesman.

h. For regulatory purposes, currently or subsequently scheduled items or classified assets will be excluded in the calculation of capital or ratio requirements of SBS for a period of five years.

i. FSLIC shall make available a line of credit for a period of two years for liquidity protection for SBS.

j. For a period of two years following the acquisition date, in determining whether a penalty shall be assessed against or paid by SBS pursuant to Section 523.12 (Deficiencies and Penalties) of the Rules and Regulations for the

Federal Home Loan Bank System ("Bank Regulations"), the liquidity requirements of Section 523.11 (Liquidity Requirements) of the Bank Regulations as applied to SBS shall be reduced by (1) the amount of SBS's liquidity deficiencies existing at the acquisition date and (2) any aggregate net withdrawals (excess of withdrawals over cash savings received) from SBS's offices after the acquisition date.

k. SBS will be entitled to establish additional branches in Florida and Iowa, including, but not limited to, Des Moines, Iowa, and to establish a consolidated headquarters office of SBS in Des Moines, Iowa.

l. In prior discussions with FSLIC concerning a bid proposal, it was Statesman's management's understanding that the establishment of branches in one additional state would be favorably considered by FSLIC. Statesman requests and requires as part of this bid proposal the right to establish branches of SBS in the State of Missouri.

m. Recognition by FSLIC that the preferred stock of Statesman owned by SBS will be a qualifying direct investment.

n. SBS shall be given 3 years, to phase out, dispose of or discontinue in an orderly manner, any acquired investments, activities, or operations inconsistent with the Home Owners' Loan Act of 1933 as amended (HOLA), provided that such action is taken at the earliest possible date without material loss to SBS.

o. SBS shall not for a period of 3 years, be deemed in violation of any of the provisions of Section 545.74 (Service Corporations) of the Rules and Regulations for the FSLIC by reason

that any activities of a service corporation acquired as part of the merger(s), at or before the effective date(s), are not approved or authorized by the Home Owners' Loan Act of 1933, as amended.

p. For a period of five years after the acquisition, for purposes of calculating SBS's building investment under Section 545.77 (Real Estate for Office and Related Facilities) of the Federal Regulations, all building investments in the acquired associations may be excluded.

q. The Board will provide the certification that the grounds set forth in section 1464(d)(b)(A)-(i)(ii), or (iii) of Title 12, United States Code, exist with respect to the Associations, or will exist in the near future in the absence of action by the Board.

6. *Exclusion of Certain Leases.* With the exception of a start-up period of not more than three months from the date of acquisition, Statesman will not assume or be responsible for the executive office lease of First Federated Savings Bank in Florida or of the office lease of Federated Financial Corporation in Atlanta, Georgia.

7. *Maintenance of Deposits.* This bid proposal is submitted on the assumption that there are approximately $631 million of deposits in the combined associations. In the event that the combined deposits should decrease by more than 10% by the actual data of acquisition, Statesman reserves the right to renegotiate its participation in the assumption of losses.

V. *Business Plan.*

Submitted herewith and incorporated by reference as part of the acquisition proposal is the Business Plan of the SBS. This Business Plan provides a description of the proposed acquisition and is supported by financial data of the combined associations, including three-year forecasts of quarterly volumes, rate/yield analysis, interest income/expense report, profit-loss report, ratio report, cashflow forecast, and a pro forma combined statement of condition as of December 31, 1987 of the four associations, as well as individual pro forma statements of condition of each association. This Business Plan, including the financial information submitted therein, forms the basis upon which the acquisition proposal is being made.

VI. *Management and Directorate of Acquirer.*

Attached hereto as Appendix B is a listing of the officers and directors of Statesman. Attached hereto as Appendix C is a listing of the officers and directors of American Life. No selection has yet been made of prospective directors for SBS. However, it is anticipated that one or more of the directors of Statesman and American Life would serve as directors of SBS and its holding company, and other directors would be selected on the basis of their experience and expertise regarding savings institutions, as well as their general proven business capabilities.

VII. *Authority of Acquirer.*

At a meeting of the Board of Directors of Statesman held on November 11, 1987, D. J. Noble was authorized on behalf of Statesman to enter into discussions and negotiations with FSLIC for the possible acquisition of federally-chartered savings institutions. Attached hereto as Appendix D is a letter dated December 4, 1987 from Whitfied, Musgrave, Selvy, Kelly & Eddy, counsel for Statesman, to

the Regional Director and Deputy Director of FSLIC setting forth this authority.

VIII. *Accountants' Statement.*

Submitted herewith as Appendix E is the requested statement from Ernst & Whinney, the independent accountants for Statesman, regarding the application of generally accepted accounting principles to the proposed transaction (purchase vs. pooling of interests), the estimated amount of unidentified intangible assets resulting therefrom, and the estimated amortization periods of such intangibles as presented in the accompanying Business Plan.

IX. *Tax Considerations and Benefits.*

Based upon the method of taxation of insurance organizations limiting utilization of non-life insurance operating losses, and the present loss carryforward position of the non-life insurance entities reflected in the consolidated Statesman tax return, loss carryovers of the acquired (non-life) associations may provide no tax benefits to Statesman. However, it is agreed that Statesman will cause an annual review of its tax position to be made through a with/without computation, and to the extent any tax benefits are actually realized in cash by Statesman directly from inclusion of the associations in the consolidated Statesman tax return, Statesman agrees to share 50% of those tax recoveries or payment reductions with FSLIC.

X. *Other Considerations.*

Statesman is the 60% owner of the holding company of Statesman Mortgage Company, which is located in

Des Moines, Iowa. It is anticipated that the mortgage business activities now being conducted by Federated Financial Corporation, the subsidiary of First Federated Savings Bank, will be transferred to Statesman Mortgage Company. Therefore, the financial projections contained in the Business Plan do not include future income and expense factors related to the business of Federated Financial Corporation.

The foregoing Acquisition Proposal and accompanying Business Plan is submitted by The Statesman Group, Inc. this 8th day of January, 1988.

The Statesman Group, Inc.

By _____

D.J. Noble
Chairman of the Board
and President

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION

BUSINESS PLAN

FIRST FEDERATED SAVINGS BANK,
WEST PALM BEACH, FLORIDA
FIRST FEDERAL SAVINGS BANK,
WATERLOO, IOWA
PEOPLES FEDERAL SAVINGS AND
LOAN ASSOCIATION, WATERLOO, IOWA
THE PERPETUAL SAVINGS AND
LOAN ASSOCIATION, WATERLOO, IOWA

January 1988

Submitted by the Management
of
The Statesman Group, Inc.
1400 Des Moines Building
Des Moines, Iowa 50309
(515) 284-7500

With the assistance of:

Ferguson & Company
600 E. Las Colinas Boulevard
Suite 1700
Irving, Texas 75039
(214) 689-1177

STATESMAN BANK FOR SAVINGS, FSB

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[Tab 1]

INTRODUCTION

The Statesman Group, Inc. ("Statesman" or "Acquirer") is submitting this Business Plan ("Plan") in connection with its proposal to the Federal Home Loan Bank Board ("Board"), the Federal Savings and Loan Insurance Corporation ("FSLIC"), the Federal Home Loan Bank of Des Moines and the Federal Home Loan Bank of Atlanta for the acquisition of First Federated Savings Bank, West Palm Beach, Florida; First Federal Savings Bank, Waterloo, Iowa; Peoples Federal Savings and Loan Association, Waterloo, Iowa; and The Perpetual Savings and Loan Association, Waterloo, Iowa.

The Plan assumes the acquisition is consummated on December 31, 1987 and that Statesman will acquire a unitary savings and loan holding company which will own a federally chartered savings bank, into which the assets and liabilities of the four associations are placed. The Plan and financial projections are presented for the resulting savings bank, hereinafter also referred to as "Statesman Bank for Savings, FSB" or "SBS".

The Plan projects a capital infusion in cash and preferred stock by Statesman, and/or its existing subsidiaries, initial financial assistance from FSLIC in the form of cash and an amortizing note receivable and continuing financial assistance in the form of cash from FSLIC. This assistance consists of spread and yield maintenance and guarantees of recovery by FSLIC of losses on certain assets ("Covered Assets"). The plan assumes that losses on other assets ("Uncovered Assets") will be assumed by SBS.

The Plan also assumes the acquisition will be accounted for using the purchase method of accounting, applied by the "push down" method, as of December 31, 1987. Purchase accounting is the method of recording a business acquisition by adjusting assets and liabilities to fair market value and setting net worth equal to the purchase price. "Push down" refers to recording the adjustments on the books of the acquired company.

In connection with the preparation of the Plan, Statesman engaged Ferguson & Company, consultants to the savings and loan industry, to assist in the preparation of the Plan and to identify improvement opportunities and make recommendations for further action. The findings and recommendations of Ferguson & Company are incorporated into the Plan, and such findings and recommendations have been reviewed and approved by Statesman.

DESCRIPTION OF THE ACQUIRER

Statesman is a financial services holding company which, through its subsidiaries, engages primarily in the business of life insurance, including annuities, and to a lesser extent, in the business of investment banking and retail brokerage and property-casualty insurance.

Although Statesman markets products in 47 states, the majority of its insurance business is conducted in the Midwest, California and the Southeast. Other financial services are provided primarily in the Midwest, Southwest and Western states through a regional investment banking and retail brokerage subsidiary. Statesman also has a mortgage banking subsidiary. Following is Statesman's condensed historical financial information for the periods indicated (dollars in thousands):

	December 31,		Sept. 30,
	1985(1)	1986(1)	1987(2)
Total assets	$555,117	$843,784	$1,192,085
Total liabilities	505,079	785,972	1,131,240
Stockholders' equity	49,308	57,057	60,468
Revenues	247,266	396,508	414,368
Benefits, losses and expenses	247,236	394,402	413,905
Net income	5,038	7,659	1,303

(1) Compiled from year-end audited financial statements.

(2) Compiled from Form 10-Q filed with the Securities and Exchange Commission (as of and for the nine months ended September 30, 1987).

CAPITAL INFUSION BY ACQUIRER

Statesman intends to capitalize SBS through a transfer of assets from the savings and loan holding company of $8.4 million in cash and $12.6 million of preferred stock of Statesman, the combined total being approximately 3% of projected total liabilities of the combined associations at December 31, 1987. The Plan also projects that Statesman will incur approximately $26 million in goodwill and other intangibles in the transaction.

FSLIC ASSISTANCE

The acquisition of the associations will require FSLIC assistance. At September 30, 1987, the associations reported a combined deficit in excess of $82 million.

The Plan projects FSLIC will initially contribute cash and a note receivable bearing interest at the Eighth District cost of funds plus 200 basis points and equal to the combined deficit, adjusted for (1) the write-off of recorded goodwill, other intangibles, deferred losses and appraised equity capital; (2) commercial real estate valuation allowances (excluding valuation allowances on single-family residential property or loans) adjusted for uncollectable accrued interest receivable; and (3) equity in the losses of Federated Financial Corporation, the wholly owned mortgage banking subsidiary of First Federated Savings Bank. The total initial FSLIC contribution is projected to be in excess of $115 million at December 31, 1987, of which thirty percent shall be paid in cash and seventy percent in the form of a note amortized over a period of five years.

The Plan also projects continuing FSLIC assistance in the form of quarterly cash payments equal to 93% of the losses on Covered Assets, which is assumed to be forty million dollars of the asset values for the Plan, plus spread and yield maintenance on Covered Assets equal to the Eighth District cost of funds plus 225 basis points. Covered Assets include all real estate owned, all investment real estate, all investments in and loans to subsidiaries and all nonperforming loans, each excluding first lien positions in one to four family residential dwelling units or loans, all as more fully set out in the proposal. For purposes of the Plan, Covered Assets are projected to be liquidated ratably over five years.

[Tab 7]

MONITORING OF THE BUSINESS PLAN

Statesman will prepare comprehensive operating budgets based upon the Plan and such budgets will be reviewed and approved by the Board of Directors. The actual operating results will be compared with the budgets and such reports will be reviewed by the Directors on a quarterly basis. This procedure will allow the Board to take corrective action pertaining to variances between budgeted and actual items and make necessary revisions to operating strategies to insure compliance with the Plan.

Monitoring of the Plan in its entirety will be evidenced in the minutes of the Board of Directors. A report of such review, together with an explanation of and justification for any proposed or material changes, will be submitted to the appropriate regulatory authority.

REVISION OF THE BUSINESS PLAN

Variances between planned and actual results may be temporary or permanent. Temporary variances may arise from the inexact process of measuring expectations of the future timing of transactions. These differences are not expected to require a revision of the Plan.

Permanent differences may arise from situations in which SBS has some control. During the process of the Board's review of the Plan and its comparison to actual operating results, the underlying assumptions used in the projections will be reviewed for validity

with current economic conditions, strategies and market expectations. Should revisions be required, the Board will authorize appropriate changes to the Plan. Any material or significant changes authorized by the Board will be reviewed with and approved by the Supervisory Agent.

METHOD OF ACCOUNTING

The projected financial statements have been prepared with purchase accounting being applied by use of the "Push Down" method. Inasmuch as the acquisition does not give rise to continuity of ownership, Statesman believes that application of the purchase method is appropriate and is in accordance with generally accepted accounting principles.

After the application of purchase accounting, the projected financial statements have been prepared as though the acquisition occurred on December 31, 1987.

REGULATORY CONSIDERATIONS

The Plan is based upon the assumption that certain regulatory forbearances and considerations will be granted. These are requested by Statesman as a result of dispensations necessary to consummate the transaction, along with the current financial condition of the associations. The Plan is based on the granting of the requested forbearances and considerations as itemized in or incorporated by reference in the bid proposal.

The financial data and projections submitted herewith form the economic basis upon which the proposal and the Business Plan were formulated.

[Tab 11]

STATESMAN BANK FOR SAVINGS, FSB NOTES TO PROJECTED FINANCIAL STATEMENTS

(1) *Significant accounting policies*

The accounting and reporting policies of Statesman Bank for Savings, FSB ("Bank") conform to generally accepted accounting principles and to general practices within the savings and loan industry.

(2) *Assumptions and estimates*

The projected financial statements are based on assumptions and estimates concerning future events and circumstances which were determined by the proposed purchaser.

The assumptions disclosed herein are those believed to be significant to the projections and/or are key factors upon which the financial results of the Bank depend and, unless otherwise indicated, are based on the circumstances and conditions that existed at the time the projections were prepared. Some assumptions will not materialize and unanticipated events and circumstances may occur subsequent to December 31, 1987, the date of this projection. Therefore, the actual results achieved during the periods covered by the projections will vary from the projections and such variations may be material. There are significant inherent risks in using outdated projections because events subsequent to their issuance may invalidate some or all of the

underlying assumptions and estimates. The assumptions used are listed in "Significant Projection Assumptions" included elsewhere in this Plan.

Cash and investments:

The projected cash and investment balances at the end of each projected period are the residual balances that result, in part, from application of the following assumptions and estimates and, in part, from expected efficiencies resulting from applications of improved cash management procedures.

Loans receivable:

Assumptions regarding mortgage loans and non-mortgage loans are listed in "Significant Projection Assumptions." This projected other data provides a listing of projected originations, origination rates and renewal rates, if applicable, for each respective loan classification. Interest income on loans receivable is calculated by the projection model with respect to the activity and rates listed in "Significant Projection Assumptions."

Federal Home Loan Bank stock:

FHLB stock is maintained in accordance with regulatory requirements over the projected period. The assumed dividend rate of FHLB stock during the three annual projection periods is listed in "Significant Projection Assumptions."

Property and equipment:

Depreciation expense has been projected based upon acquired amounts, adjusted to include the projected equipment purchases. Depreciation has been calculated on the straight-line method over the estimated useful lives of the assets.

Savings deposits:

All assumptions regarding transaction accounts, short term certificates of deposit, intermediate term certificates of deposit (over 6 months through 18 months), long term certificates of deposit (more than 18 months) and jumbo accounts are listed in "Significant Projection Assumptions." This projected other data provides a listing of the projected changes and average cost of each respective savings deposit classification. Interest expense on savings deposits is calculated by the projection model with respect to the activity and rates as summarized in "Significant Projection Assumptions."

Loan origination fees:

Loan origination fees are projected as a function of loan volume as outlined in "Significant Projection Assumptions." All fees are calculated, as appropriate, by the projection model at 1% and deferred and amortized by the level yield mentod over the loan life.

Other income and expense:

All other items of income and expense were projected from analyses of the actual respective amounts (per books) for 1987 with increases or decreases appropriate to the Plan.

Federal income taxes:

Federal income taxes have not been provided since permanent differences, primarily nontaxable FSLIC assistance, offset pretax accounting income.

Interest rate scenario:

The interest rate scenario included in the Plan is based upon the September 1987 Savings and Loan Industry Assumptions prepared by the Federal Home

Loan Bank Board, adjusted for local economic conditions. The interest rates are listed in "Projected Interest Rates, Net Interest Income Analysis and Spread Analysis" presented elsewhere in this Plan.

(3) *Accounting for the acquisition*

The accompanying projected financial statements have been prepared assuming purchase accounting is applied to record the acquisition of the Bank and that purchase accounting is applied by the "push down" method as of December 31, 1987. Purchase accounting is the method of recording a business acquisition by adjusting assets and liabilities to market value and eliminating net worth. "Push down" refers to recording the adjustments on the books of the acquired company.

Goodwill of approximately $25.8 million arising from the acquisition is being amortized over 12 years on the level yield method.

OMB No. 3068-0037
EXPIRES 4/30/88

Docket No.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION
Washington, D.C. 20552

APPLICATION H-(e)1

Application Pursuant to Section 408(e)(1)(B) of the National Housing Act and Section 584.4(b) of the Regulations for Savings and Loan Holding Companies for Approval of Acquisition of One Insured Institution, Directly or Indirectly, by a Company Other Than a Savings and Loan Holding Company.

American Life and Casualty Insurance Company
The Statesman Group, Inc.

Legal name of Applicant

1400 Des Moines Building, Des Moines, Iowa 50309

Address of principal executive office Zip Code

First Federated Savings Bank
First Federal Savings Bank
Peoples Federal Savings and Loan Association
The Perpetual Savings and Loan Association
Statesman Bank for Savings, FSB

Legal name of insured institution being acquired directly or indirectly (hereinafter called the Associations and Institution)

Statesman Savings Holding Corp.

Legal name of any savings and loan holding company being acquired (hereinafter called the Holding Company)

William J. Sweet, Jr., Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Name and address of persons to whom communications are to be sent

H-(e)1
REV. JULY 1981

II. *INFORMATION REQUIRED BY ITEMS*

A. *GENERAL BACKGROUND*

Item 1. *Summary of Proposed Acquisition*

The proposed acquisition and any related transactions should be briefly summarized in a form that makes the acquisition and transactions readily understandable.

The Statesman Group, Inc., ("Applicant") headquartered in Des Moines, Iowa, proposes to acquire (the "Acquisition"), through a supervisory acquisition assisted by the Federal Savings and Loan Insurance Corporation ("FSLIC"), substantially all of the assets and liabilities of First Federated Savings Bank, West Palm Beach, Florida; First Federal Savings Bank, Waterloo, Iowa; Peoples Federal Savings and Loan Association, Waterloo, Iowa; and The Perpetual Savings and Loan Association, Waterloo, Iowa. (The four institutions are collectively referred to herein as the "Associations.") A copy of the acquisition proposal submitted to the FSLIC (the "Acquisition Proposal") is attached as Exhibit A. The Acquisition Proposal, a proposed assistance agreement, and other matters are now under negotiation.

As the first step in the Acquisition, Applicant intends to establish and incorporate Statesman Savings Holding Corp., a unitary savings and loan holding company (the "Holding Company"). The initial capital infusion into the Holding Company will be $21 million, of which 60% ($12.6 million) will be represented by preferred stock issued by Applicant to the Holding Company in exchange for preferred stock issued by the Holding Company to Applicant. The other 40% ($8.4 million) will be in the form of cash contributed by American Life and Casualty Insurance

Company (the "Insurance Company"), a wholly-owned subsidiary of Applicant, in exchange for voting common stock issued by the Holding Company to the Insurance Company. As a result, the Insurance Company will have voting control of the Holding Company.

As the second step in the Acquisition, the Holding Company will establish and incorporate Statesman Bank for Savings, FSB, a wholly-owned subsidiary federal savings bank (the "Institution"). The Holding Company will contribute all of the preferred stock issued by Applicant and all of the cash acquired from the Insurance Company to the Institution in exchange for all of the common stock of the Institution, thereby capitalizing the Institution in the amount of $21 million.

The third step of the Acquisition will be the purchase and assumption by the Institution of substantially all of the assets and liabilities of First Federated Savings Bank. The fourth step will be the conversion of each of the remaining three Associations and its merger into the Institution.

The Acquisition will be effected on a "turnkey" basis, with the FSLIC providing at its own cost for the establishment and incorporation of the Institution, transfer of assets and liabilities to the Institution, conversion and merger of the remaining Associations into the Institution, and recording and filing of all documents in accordance with various state and federal requirements.

Applicant has submitted a business plan (the "Business Plan"), enclosed separately as Exhibit B, in connection with the Acquisition Proposal. The Business Plan assumes the acquisition is consummated on December 31, 1987, and presents financial projections for the Institution. The Business Plan projects a

capital infusion in cash and preferred stock by Applicant and/or its existing subsidiaries, initial financial assistance from FSLIC in the form of cash and an amortizing note receivable, and continuing financial assistance in the form of cash from FSLIC. This assistance consists of spread and yield maintenance and guarantees of recovery by FSLIC of losses on certain assets. The Business Plan assumes that losses on other assets will be assumed by the Institution.

The Acquisition Proposal is subject to a number of specific terms and conditions, among which are certain regulatory forbearances and considerations to be granted or obtained by the FSLIC. These forbearances and considerations are listed at pages 7-16 of the Acquisition Proposal which is attached as Exhibit A, and are hereby incorporated by reference into this Application. Applicant wishes to emphasize the importance of the requested forbearances and considerations to the completion of the Acquisition, and the consequent need for the appropriate offices within the FSLIC to review the relevant issues at an early stage. Without in any way affecting the requested forbearances and considerations as set forth in the Acquisition Proposal and incorporated by reference herein, a summary of the forbearances and considerations requested is given below:

(a) For regulatory purposes with respect to the books and records of the Institution, push-down accounting shall be used to record the purchase of the Institution's capital stock by the Holding Company. Twenty one million dollars of the cash contribution to be made to the Institution pursuant to an assistance agreement to be entered into between the FSLIC and Applicant is to be a credit to the Institution's

regulatory capital; therefore, for regulatory accounting purposes, the Institution will book such contribution as a direct addition to its net worth.

(b) The FSLIC will permit Applicant and the Holding Company to enter into a capital maintenance agreement for the Institution that is limited to: (i) an agreement to infuse capital in order to maintain the regulatory capital of the Institution at a level consistent with that required by 12 C.F.R. § 563.13(b) as now or hereinafter in effect, *provided* that the aggregate amount of this obligation shall not exceed $4 million; and (ii) an agreement that in the event the Institution's ratio of regulatory capital to total liabilities at the end of any given calendar quarter falls below 2 percent, without prompt remedy, the FSLIC will have the right to vote the securities acquired by Applicant and the Holding Company, remove the Institution's board of directors, and/or dispose of any or all of the voting securities of the Institution.

(c) The FSLIC will give permanent and continuing approval to the issuance of debt by Applicant and its affiliates (or waive the debt requirement under section 408(m) of the National Housing Act), so long as the regulatory capital of the Institution meets the amount required at the time the debt is issued.

(d) The FSLIC will authorize the acquisition under section 408(m) of the National Housing Act, 12 U.S.C. § 1730a, will determine under such authority that Applicant and its affiliates are exempt from the operation of section 408(p) of the National Housing Act, 12 U.S.C. § 1730(p), with respect to the cross-marketing of products or services between the Institution and Applicant, its subsidiaries or its affiliates, and will confirm that such sales, as described herein, are consistent with section 408(d) of the National Housing Act.

(e) The acquisition will occur pursuant to FSLIC authorization under section 408(m) of the National Housing Act, 12 U.S.C. § 1730a, and the FSLIC will affirmatively find that such authorization preempts the laws of any state that would limit or preclude the affiliation of the Institution and Applicant or any of its insurance affiliates or would, by reason of such affiliation, prohibit the sale of insurance by Applicant, its insurance affiliates or agents.

(f) The acquisition will occur pursuant to authorization under section 408(m) of the National Housing Act.

FEDERAL HOME LOAN BANK BOARD
907 Walnut Street
Des Moines, Iowa 50309

OFFICE OF SUPERVISORY AGENT—
EIGHTH DISTRICT

MEMORANDUM

DATE: FEBRUARY 26, 1988

TO: Linda Plye, Director of Corporative Activities

FROM: Daniel T. McKee
Supervisory Agent

John A. Pringle
Supervisory Agent

RE: S-Memorandum—Proposed
FSLIC-Assisted Acquisition
of

First Federal Savings Bank	TL $196.8 Million
Waterloo, Iowa	TA $152.4 Million
FHLBB Docket No. 2321	NW ($44.4) Million NW/TL (22.6%) NW/TA (29.1%) Data as of 12/31/87
	and
Peoples Federal Savings and Loan Association	TL $154.8 Million
	TA $152.4 Million
Waterloo, Iowa	NW ($2.4) Million
FHLBB Docket No. 5965	NW/TL (1.6%) NW/TA (1.6%) Data as of 12/31/87

	and
The Perpetual Savings and Loan Association	TL $123.6 Million TA $118.9 Million
Waterloo, Iowa	NW ($4.7) Million
FHLBB Docket No. 4477	NW/TL (3.8%) NW/TA (3.9%) Data as of 12/31/87
	by
Statesman Group, Inc.	TL $1,131.2 Million
Des Moines, Iowa	TA $1,192.1 Million
Private Investor	NW $60.9 Million NW/TL 5.4% NW/TA 5.1% Data as of 9/30/87

I. *GENERAL RECOMMENDATION*

First Federal Savings Bank ("First Federal") and Peoples Federal Savings and Loan Association ("Peoples") are FSLIC-insured, federally chartered mutual institutions with home offices in Waterloo, Iowa. The Perpetual Savings and Loan Association ("Perpetual") is an FSLIC-insured, state chartered mutual institution with its home office also in Waterloo, Iowa. First Federal has one branch each in Oelwein, LaPorte City, Dubuque and Waterloo, and two branches in Cedar Falls. Peoples has one branch each in Manchester, New Hampton, Sumner, Traer, Union, Waterloo and Elkader, and two branches in Cedar Falls. Perpetual has one branch each in Parkersburg, Waterloo and Jesup, and two branches in Waverly.

On December 11, 1987, these three institutions were bid nationwide on an assisted basis along with First Federated Savings Bank, North Palm Beach, Florida. One bid was received by the January 20, 1988, deadline, from the Statesman Group, Inc. ("Statesman"), Des Moines, Iowa. Their bid is less than the cost of liquidation of the three Waterloo institutions along with the North Palm Beach institution.

As reflected in current financial data of the three individual Waterloo institutions, each has a negative net worth. First Federal has a continuing trend of monthly operating losses. Peoples and Perpetual have generated nominal monthly operating income, resulting in an annualized return on assets of 0.1% for both institutions. Given the three

institutions' financial condition and the acceptable acquisition proposal from Statesman, an FSLIC-assisted acquisition at this time will minimize the eventual cost of resolution to the FSLIC. Accordingly, we recommend that the FHLBB approve the proposed FSLIC-assisted acquisition of First Federal, Peoples and Perpetual by Statesman.

The proposed transaction is expected to be accomplished as follows:

The Bank Board would allow a supervisory merger of the four institutions; approve the establishment and incorporation of Statesman Savings Holding Corp. and Statesman Bank of Savings, FSB; transfer the assets and liabilities of the combined institutions to Statesman Bank of Savings, FSB; and permit Statesman Bank of Savings, FSB, to establish branches in the State of Missouri in addition to the branching rights associated with the acquisition of the Iowa and Florida institutions. The FSLIC would provide cash (30%) and promissory note (70%) contribution totaling approximately $115,000,000; pay 93% of losses on covered assets for five years from the date of acquisition; provide yield maintenance on covered assets; indemnify Statesman, its subsidiaries, affiliates, officers, directors and employees for five yeas; and grant certain regulatory forbearances and considerations.

II. *FINANCIAL STATUS OF PROBLEM INSTITUTIONS*

A. *First Federal*

The institution's most recent quarterly report dated December 31, 1987, indicated

average monthly net operating deficits of $666,667. Total regulatory net worth was a negative $44.4 million.

As of December 31, 1987, it is estimated that the institution has unbooked losses of $11.3 million. The majority of these losses, approximately $9.3 million, are the result of the institution's investments in large commercial real estate loans.

During late 1982, the prior Board and President decided to have the institution "outgrow" the problem of its old, underwater loan portfolio. The institution failed to operate profitably while growing over 90% in 20 months. The institution invested its proceeds from growth into commercial real estate loans on a nationwide basis. These consisted primarily of construction and AD&C loans. Because of the Board's and President's unsafe and unsound practices, they were replaced on November 5, 1987.

Since the August 31, 1987, supervisory examination, First Federal has been virtually unsuccessful in working out its problem assets. The new Board and President provide the institution with a good personnel base to successfully work out some of the problem loans and real estate owned.

The following summarizes First Federal's relevant financial history:

	Annual Periods Ended (in thousands)		
	12-31-87	*12-31-86*	*12-31-85*
Assets	$152,402	$191,957	$236,719
Net Worth	($44,389)	($31,864)	($7,007)
Net Worth/Assets	(29.13%)	(16.60%)	(2.96%)
Interest-Earning Assets/Interest-Bearing Liab.	61.22%	69.44%	84.44%
Net Interest Margin on Average Earning Assets	(2.80%)	(2.49%)	(0.56%)
Net Income	($12,527)	($24,884)	($9,031)
Operating Expense/Average Assets	2.42%	2.05%	1.91%
1 Year Hedged GAP	(50.09%)	(34.85%)	(25.09%)
Scheduled Items/Assets	35.77%	23.54%	14.74%
Liquid Assets/Savings Deposits	6.35%	10.10%	6.16%

B. *Peoples*

The institution's December 31, 1987, quarterly report indicated a deficit regulatory capital of $2.4 million. Although the institution reported nominal income of $96,000 for the three month period ended December 31, 1987, losses, excluding a $4.3 million loan loss reserve in June 1987, have average $20,000 a month for the 12-month period ended December 31, 1987. An estimated 20 percent of assets are in delinquent local 1-4 family mortgage loans, and local 1-4 family REO and REJ. Combining these assets with the continued poor condition of the local economy will preclude this institution from sustaining periods of profitability or returning to solvency in the near future.

In addition, due to the continuing poor condition of the local economy, this institution may have unreserved losses on loans in excess of $2.5 million.

The following summarizes First Federal's relevant financial history:

	Annual Periods Ended (in thousands)		
	12-31-87	*12-31-86*	*12-31-85*
Assets	$152,444	$165,225	$166,315
Net Worth	($2,413)	$1,977	$2,693
Net Worth/Assets	(1.58%)	1.20%	1.62%
Interest-Earning Assets/Interest-Bearing Liab.	90%	90%	91%
Net Interest Margin on Average Earning Assets	1.62%	1.45%	1.12%
Net Income	($4,392)	($715)	($343)
Operating Expense/Average Assets	1.60%	1.50%	1.50%
1 Year Hedged GAP	(29.57%)	(27.10%)	(30.78%)
Scheduled Items/Assets	20.86%	20.05%	13.66%
Liquid Assets/Savings Deposits	5.30%	7.60%	3.90%

C. *Perpetual*

The institution's most recent quarterly report dated December 31, 1987, indicated a deficit regulatory net worth of $4.7 million. Net operating income which has averaged $12,917 per month during 1987, is insufficient to cover losses on the sale of real estate owned and provisions for losses on loans.

As of December 31, 1987, the institution had unbooked losses of approximately $595,000, which were identified at the November 16, 1987, examination. The majority of the losses suffered by the institution are attributable to the depressed local economy and to second mortgage loans purchased from First American Mortgage Company.

The following summarizes Perpetual's relevant financial history:

	Annual Periods Ended (in thousands)		
	12-31-87	*12-31-86*	*12-31-85*
Assets	$118,931	$139,202	$143,916
Net Worth	($4,681)	$428	$1,819
Net Worth/Assets	(3.94%)	0.31%	1.26%
Interest-Earning Assets/Interest-Bearing Liab.	83.75%	83.72%	85.89%
Net Interest Margin on Average Earning Assets	1.91%	1.88%	1.88%
Net Income	($4,255)	($2,247)	($54)
Operating Expense/Average Assets	1.81%	1.75%	1.58%
1 Year Hedged GAP	(24.50%)	(23.34%)	(20.82%)
Scheduled Items/Assets	13.73%	13.93%	7.22%
Liquid Assets/Savings Deposits	7.58%	6.93%	8.31%

D. *Condition of Industry in Des Moines Bank District*

There are 188 insured institutions in the Eighth Federal Home Loan Bank Board ("FHLBB") District. Assets of these insured institutions totaled $54.7 billion as of December 31, 1987.

As of December 31, 1987, it is projected that twenty (20) Eighth District insured institutions, representing assets of $4.1 billion or 7.5 percent of total Eighth District insured assets, will be insolvent within the next 12 months.

Out of the 50 member institutions in Iowa, eight (8) are currently insolvent with $1.1 billion in assets, comprising 12.1 percent of total Iowa member assets. The average net worth of Iowa institutions equaled 1.8 percent of assets as of December 31, 1987. In addition, 30 Iowa member institutions reported net worth levels in excess of 3 percent as of December 31, 1987.

III. *SUPERVISORY HISTORY*

A. *First Federal*

First Federal was incorporated in 1878 as a state chartered savings and loan association, became a bank member in 1934, converted to a federally chartered savings and loan association and received insurance of accounts in 1953, and converted to a federally chartered savings bank in 1983.

In 1981 and 1982 First Federal had operating losses of $1,654,002 and $3,108,302, respectively. The institution's mismatch of asset and liability maturities during this rising interest rate period caused the bulk of these losses. Also, during this same time period, First Federal's lending area became generally depressed with little sign of improvement. In order to reverse these operating losses and counteract the Waterloo economy, First Federal undertook a total reorganization in September of 1982. The institution planned to grow from $140 million to $500 million in assets by December 31, 1987. The proposed growth strategy was to be achieved by incresing business thrust (e.g., financial intermediary, mortgage banking—multi-locations, real estate development, and expanding other services); diminishing the negative effect of old assets by acquiring new assets at a positive spread; buying mortgage banking servicing income streams; discounting GNMA or other favorable accounting strategies; using purchase method accounting where applicable as mergers occur; and buying out-of-state loans.

From September 1982 to June 1984 First Federal's assets increased from $140 million to $238 million. A large percentage of this increase was initially funded through borrowed money and brokered deposits and invested in large loans purchased in the secondary market. The institution increased their senior management staff by one person in December of 1982 to accommodate this growth. The new senior manager specialized in large real estate loans. His goal, at the direction of his superiors, was to raise $1.4 million in loan fees during 1983.

On January 6, 1984. First Federal consummated an unassisted supervisory merger with Oelwein Federal Savings and Loan Association ("Oelwein Federal"), Oelwein, Iowa. This merger was approved by the FHLBB and the Supervisory Agent ("SA"). Oelwein Federal had $13 million in assets and approximately $100,000 in net worth as of the merger date. First Federal was the surviving institution.

The December 9, 1983, supervisory examination revealed a continued mismatch in asset/liability maturities; but, more importantly, a lack of proper underwriting procedures (including inadequate appraisals) on loans purchased in the secondary market, and minimal analysis of loans and participations purchased. In addition, scheduled items increased significantly and it appeared that the Waterloo economy was worsening.

The SA met with First Federal's board of directors on March 2, 1984, to discuss the December 9, 1983, examination. It was noted

during the meeting that a follow up to this exam would begin during the coming weeks to determine if the institution has taken corrective actions regarding deficient lending practices.

The March 14, 1984, supervisory examination noted that during the 14 months ended February 29, 1984, $79 million of loans and participations were purchased. This activity provided management with the loan fee income needed to meet its $1.4 million goal. During this time period, the institution had inadequate resources to devote to this lending activity. On June 18, 1984, First Federal executed a Supervisory Agreement regarding loan underwriting at the request of the SA.

On November 1, 1984, the SA met with First Federal's board of directors to discuss the September 14, 1984, supervisory examination report. The SA was concerned with the institution's rapid growth and investments in commercial real estate, combined with a decreasing net worth ratio. The SA requested that the institution revise its business plan to disallow the granting of any additional AD&C loans or other types of new commercial real estate construction loans. The SA also requested that the institution submit for his review a written detailed quarterly status report for each loan cited in the examination report. Finally, the board of directors were reminded of their fiduciary responsibilities.

The high degree of risk First Federal assumed in the loans and participations purchased during 1983 and 1984 took their toll on the institution's

net worth following the March 2, 1985, supervisory examination. Continued severe operating deficiencies caused by excessive nonperforming assets and nearly $3.6 million in indicated loan losses more than depleted the $1.9 million net worth as of February 28, 1985.

As a result of the March 2, 1985, examination report findings, the SA held a meeting with the institution's board of directors on April 30, 1985. At that meeting the SA requested that the board execute a Consent Resolution. The board signed the Consent Resolution on May 22, 1985.

First Federal was shopped in accordance with standard Federal Home Loan Bank Board procedures in June of 1985. No institutions or investor groups were interested on an unassisted basis. A bid packet was sent to interested parties on September 13, 1985, requesting bid proposals to be submitted by October 7, 1985. A bid was submitted by First Financial Savings Bank ("First Financial"), Des Moines, Iowa, and Midland Financial Savings and Loan Association ("Midland"), Des Moines, Iowa. Midland's bid was unacceptable upon receipt and First Financial's bid was deemed unacceptable by FSLIC during June of 1986. Also, on June 17, 1986, First Financial withdrew its merger applications to acquire First Federal on an assisted basis.

The February 3, 1986, supervisory examination indicated an asset portfolio heavily weighted with loans secured by major commercial real estate projects. These loans were secured by properties in Texas, Oklahoma, Colorado, Florida, Nevada, Washington, Hawaii, Minnesota,

and Iowa. On many of the participations, First Federal is a minor participant in the loan and, thus, has virtually no control over the asset. Possible losses on these major projects totaled $15 million. Sixty-eight percent of the $105.5 million in large commercial real estate loans purchased or originated by First Federal were subject to adverse comment at this exam. In addition, the institution's operating losses reached $1.0 million per month in 1986. The SA met with the institution's board of directors on June 18, 1986, to discuss the February 3, 1986, examination.

The SA met with the institution's board of directors on May 1, 1987, to discuss its current financial condition.

During the early part of 1987 the SA began interviewing individuals to replace the current board of directors and President at First Federal. On May 21, 1987, FSLIC indemnification was requested for five prospective directors and a prospective President to replace the current board and President at First Federal. An indemnification agreement was obtained from the FSLIC on September 21, 1987. The SA met with First Federal's board of directors on November 5, 1987, and discussed with them the need to bring on new personnel as board members and President of the institution. During that meeting, all members of the board and the President resigned. The new board and President were appointed at the same meeting.

At the second meeting of the new board, November 19, 1987, the SA met with the

members to discuss the June 16, 1987, supervisory examination report. The new board was also presented with a new Consent Agreement for their review and execution. The new board signed the new Consent Agreement on January 21, 1988.

The following table provides a listing of First Federal's recent examination reports and ratings:

Date	*Exam Type*	*Composite Evaluation*	*CRA Evaluation*
06-16-87	Supervisory	5	3
04-02-87	Special	5	3
02-25-87	Special	5	3
01-28-87	Special	—	—
02-03-86	Supervisory	5	3
03-02-85	Supervisory	5	3
09-14-84	Supervisory	5	3
08-22-84	Supervisory	4	3
03-14-84	Supervisory	4	3
12-09-83	Supervisory	4	3
04-13-83	Special	3	3
09-27-82	Supervisory	3	3
06-01-82	Special	4	—
12-03-81	Supervisory	4	2
11-21-80	Supervisory	2	3
08-03-79	Supervisory	2	2

B. *Peoples*

Peoples was incorporated as a state chartered mutual savings and loan association on January 25, 1879. The institution became a member of the Federal Home Loan Bank of Des Moines on March 1, 1956, and received insurance of accounts

on February 28, 1956. Peoples was a state chartered institution (Peoples Mutual Savings and Loan Association) until it merged with Peoples Federal Savings and Loan Association, Cedar Falls, Iowa, and became a federal charter at that time.

This institution received composite ratings of "2" and "3" up until the annual examination of December 1, 1984, at which time the institution received composite ratings of "4" and "3." Prior to this, although ratings were not particularly adverse, examinations did note significant losses, resulting from inadequate net interest margins. Peoples suffered the normal post deregulatory spread problems, the result of fixed rate loans yielding well below the institution's increasing cost of funds. In addition, this institution's normal lending territory was increasingly becoming depressed due to agricultural difficulties, the result of which was an increasing amount of nonearning assets. All of these factors led up to a somewhat weak capital position, prior to Peoples' more serious supervisory concerns.

Peoples' December 1, 1984, examination disclosed a composite rating of "4." This rating was due primarily to a capital position which had been reduced to $1.7 million, losses of $967,000 for the period, and scheduled items which were noted to be $13.6 million or 8.1% of assets. The losses were due primarily to reserves for uncollected interest and appraised losses on nonearning assets. As a result of these findings, the SA requested to meet with this board to discuss methods of alleviating the above concerns. Items discussed by the SA were merger proposals,

possible capital infusion and branch sales. Corrective measures were properly addressed in response to the SA.

Another meeting was held with the board of this institution on November 21, 1985. High scheduled items, further losses, and inadequate spreads were discussed. The SA requested a net worth action plan at this meeting so as to document this institution's plan for a return to capital adequacy.

The December 31, 1985 examination disclosed continuing problems created by the weak economy in the Waterloo area. Scheduled items had increased to 15.2% of assets and were comprised entirely of loans on 1-4 family type properties. Although net worth had increased slightly, it was due primarily to nominal profits which occurred due to softening interest rates. As a result of these findings, the SA advised the institution that a return to sustained periods of profitability and adequate net worth were not likely and the institution should immediately seek a merger partner or some sort of capital stock conversion to alleviate these concerns. This letter also discussed the institution's net worth action plan requested earlier. The SA notified the institution that the plan was not adequate in that it did not display a return to capital adequacy. The board was instructed to continue working on the action plan and explore new areas of restructuring.

The SA again requested to meet with this board in December of 1985. The meeting, held January 27, 1986, checked the progress of the institution

in terms of net worth action plans, stock conversions, decreasing size, and branch sales. Many of these items did not occur because the institution was unable to effectuate any of the events in a proper manner. Although a net worth action plan was in place, little progress was noted toward capital improvement as the economy was far too weak for improvement.

The next course of supervisory action at this institution was a Supervisory Agreement, which was obtained on August 20, 1986, and was the result of continued losses and a projected insolvency of less than one year. The Agreement was standard and covered such items as lending, investment and other operating criteria. The institution has complied with this Agreement.

In March of 1987, the SA met again with this board to discuss the institution's business plan and progress thereto. We notified the board that the upcoming examination would likely result in the depletion of all of the institution's net worth due to asset classifications. Previous to this, the institution had not been subject to classification. In addition, continued operating losses were being caused by a high level of nonearning assets. We also discussed a proposed merger and capital conversion plan organized by Peoples and Perpetual. A proposed investor was to inject several million dollars into the combined institution as well as obtain several million dollars in FSLIC assistance. The Agreement did not occur as the feasibility of the combined institution was questionable.

The next item of supervisory concern at this institution was dated April 25, 1987, and concerned a memo from the examiners to the Principal Supervisory Agent. An examination which commenced March 23, 1987, would require Doubtful and Loss classifications of $8 million and, in turn, loss reserves of $4.2 million. This exhausted all of Peoples' net worth. Total classified assets amounted to $30 million or 18.2 percent of assets. The institution at this time was given a "5" rating. The exam noted that the institution's primary problems were due to severe economic conditions and that management had failed to take aggressive steps to reduce the level of REO and problem assets. The exam also noted concerns with the institution's level of interest rate risk, business plan, and a year end operating loss of $711,000.

A supervisory letter sent May 28, 1987, requested corrective action with regard to all concerns as well as a loss reserve of $4.2 million. The reserve rendered the institution insolvent and, thus, a Consent Agreement dated June 17, 1987, was obtained. The Consent Agreement prohibits the institution from any lending, except certain residential mortgage and consumer loans, and other operational matters without prior written approval of this office.

The final supervisory matter concerning this institution was a special limited examination completed October 19, 1987. The examination was conducted to determine compliance with the Consent Agreement. It was reported that in several instances the institution was not in compliance with the Agreement; however, Supervision determined that the violations were

inadvertent and have not occurred subsequent to the examination.

On December 23, 1987, Peoples submitted a capital forbearance application which will be denied due to the lack of sufficient earnings to restore capital to the minimums required by Section 563.13 within a reasonable period of time. In conjunction with the forbearance application, a proposed merger plan between Peoples and Perpetual was also submitted. The proposed merger would combine the two insolvent institutions with the intention of achieving operating economies of scale. The proposal would not result in the resolution of the two FSLIC cases as does Statesman's acquisition proposal.

The following table provides information regarding Peoples' examination report findings.

Date	*Exam Type*	*Composite Evaluation*	*CRA Evaluation*
10-19-87	Special	5	3
03-23-87	Supervisory	5	3
12-31-85	Supervisory	4	3
12-01-84	Supervisory	4	3
09-09-83	Supervisory	2C	3
08-14-82	Joint Supervisory	2C	3
06-19-81	Joint Supervisory	2B	3
02-29-80	Joint Supervisory	1B	3

C. *Perpetual*

Perpetual was incorporated as a state chartered mutual savings and loan association on April 1, 1890. The institution became a member of the Federal Home Loan Bank of Des Moines on

March 10, 1938, and received insurance of accounts on December 26, 1950.

Perpetual received composite ratings of "2" and CRA ratings of "3" prior to 1982. The institution operated free of any significant supervisory concerns; however, in 1981, operating losses due to a rapid increase in the cost of savings began to adversely impact the institution's capital position.

In October 1982, the institution decided to refinance a large amount of Federal Home Loan Bank advances, incurring prepayment penalties of approximately $2 million. The institution had incorrectly believed that such losses could be deferred and amortized over time. The subsequent examination, as of December 27, 1982, disclosed concern over the impact of the continued operating losses and prepayment penalties on the institution's net worth position. The institution was assigned a composite rating of "3."

A meeting with the board of directors was held on January 24, 1983, to discuss the examination results and deteriorating net worth. Another meeting with the board was held November 27, 1984, to again discuss the institution's net worth position.

Off-site monitoring in September 1984 revealed deterioration in asset quality with significant increases in real estate owned and past due loans. As a result, an examination commenced October 27, 1984. Operating lossed continued to drain the institution's net worth which, as of

September 20, 1984, represented 1.1 percent of total assets. Also of concern was the increasing level of scheduled items (3.9 percent of total assets) and a high level of interest rate risk. During the examination, the examiners discovered that the institution had funded a $1 million purchase of second mortgage loans from First American Mortgage Company, Inc. ("FAM"), and issued a commitment to purchase an additional $9 million of this type of loan which was to be funded in November 1984. The underlying loans were not available for review at this examination; however, the review of a sample loan revealed a high degree of risk, with borrowers having poor credit histories and questionable repayment ability. The borrowers were charged annual percentage rates of up to 30 percent. The loans were allegedly 100 percent insured against default by Rockwood Insurance Company, and the institution's investment was dependent on the insurance rather than the individual borrowers. The institution's composite rating at this examination was lowered to a "4."

On January 9, 1985, a meeting with the board of directors was held to discuss the results of the October 1984 examination and the quality of the FAM loans.

An examination was performed on March 20, 1985, to review the status of the FAM loans. It was determined that, as underwritten, the $10 million in FAM loans represented a commercial loan, and an excessive concentration of credit to one borrower. The institution was requested to divest itself of the investment to within the level provided by the commercial loans-to-one-

borrower regulation. The composite rating remained a "4."

A meeting was held with representatives of FAM on June 11, 1985, to discuss the operations of FAM and the problems that the regulators had with the FAM loans. The lack of adequate documentation and the failure of the institution to include this type of loan in their underwriting guidelines were the two primary items of concern which led to the examiners' classification of these loans as commercial loans to FAM. However, the institution was notified on September 10, 1985, that the loans could be considered real estate loans if the two criteria, previously mentioned, were met. Correspondence from the institution on September 13, 1985, advised this office that the board adopted a resolution to include this type of loan in its underwriting standards and they would pursue FAM to obtain needed documentation and delinquency reports.

At the November 7, 1985, examination, the viability of the institution was questioned due to the low level of net worth and problems associated with the FAM loans. A law suit was filed against FAM by E.F. Hutton, a loan purchaser, alleging fraud and breach of contract in FAM's loan servicing and misappropriation of funds by FAM and its chairman. Also of concern, regarding the collectibility of these loans, was the failure of the institution to have the individual mortgages and loss payee provisions of the surety bond assigned to them. A new servicer was hired and began reviewing the files to determine the delinquency status of the individual loans. Scheduled items, which continued to increase due to the depressed local

economy of Waterloo, Iowa, represented 6 percent of total assets at this review.

A meeting with the board of directors was held on January 15, 1986, at the request of the institution, to discuss director liability and other issues of concern, which included the FAM loans and the November 1985 examination report. Lawsuits had been filed against FAM by individual borrowers in two states seeking relief due to unconscionable interest and points. The institution's eligibility for a supervisory conversion to stock was also discussed.

The May 13, 1986, examination report disclosed further deterioration in the condition of the institution. The delinquency report on the FAM loans showed 47 percent of the loans were past due 90 days or more, and a loss of $875,000-$1,283,000 was estimated by the new servicer. Litigation against FAM continued in Alabama and South Carolina with potential losses on loans in these states of 100 percent and 40 percent, respectively. The institution's composite rating was lowered to "5" at this examination.

The board of directors signed a Consent Agreement on July 16, 1986, due to the anticipated insolvency of the institution.

A proposal for a merger between Perpetual and Peoples was submitted to this office for review in October 1986. The proposal stated that an investor would infuse up to $9 million of fresh capital, if the FSLIC would infuse $13 million. The proposal was rejected because 1) it represented the merger of two weak institutions

which was against FSLIC policy, 2) the investor never committed the funds, and 3) an extensive shopping procedure would have to precede such a plan.

An examination performed as of October 20, 1986, disclosed an insolvent institution with serious earnings problems and a high level of scheduled items (11.9 percent of total assets). The institution incurred a net loss of $2,281,000 for fiscal year end September 1986. The majority of the loss, $1,594,000, was due to specific loss reserves established for FAM loans. Concern over management and the board's willingness and ability to comply with the Consent Agreement was also noted, as several deficiencies were disclosed during the examination. The institution's composite rating remained a "5."

The case was transferred to the FSLIC on February 26, 1987.

A meeting with the board of directors was held on March 18, 1987, to discuss the October 1986 examination and the status of the FAM loans. The institution had in excess of $7.8 million of FAM loans outstanding, with loss reserves of $1.5 million recorded and additional reserves of $1.2 million to be made.

On December 23, 1987, Perpetual submitted a capital forbearance application which was subsequently denied due to the lack of sufficient earnings to restore capital to the minimum level required by Section 563.13 within a reasonable period of time. In conjunction with the forbearance application, a proposed merger plan

between Perpetual and Peoples was also submitted. The proposed merger would combine the two insolvent institutions with the intention of achieving operating economies of scale. The proposal would not result in the resolution of the two FSLIC cases as does Statesman's acquisition proposal.

An examination was performed as of November 16, 1987, and disclosed no improvement in the condition of the institution. Management has been unsuccessful in reducing the level of problem assets and limiting the institution's level of losses. Unreserved losses identified at this examination totaled $595,000. The institution reported a net loss of $3.8 million for its fiscal year ending September 30, 1987, which represents a return on average assets of the negative 2.9%. The net loss, which is primarily due to losses on the sale of real estate owned and provision for losses on assets, had reduced the institution's regulatory net worth position to negative $4.2 million, or 3.4% of total assets as of September 30, 1987. The examination report indicated that the level of problem assets remains high, representing 13% of total assets. A meeting with the institution's board of directors has been requested to discuss the results of this examination.

The following table provides information regarding Perpetual's examination report ratings:

Date	*Exam Type*	*Evaluation*	*Evaluation*
11-16-87	Joint Supervisory	5	3
10-20-86	Joint Supervisory	5	3
05-13-86	Joint Special	5	3
11-07-85	Joint Supervisory	4	3
03-20-85	Joint Supervisory	4	3
10-27-84	Joint Supervisory	4	3
09-17-83	Joint Supervisory	2	3
12-27-82	Joint Supervisory	3	3
10-31-81	Joint Supervisory	2	3

IV. *PLEDGED ACCOUNTS*

There are no pledged accounts at First Federal, Peoples, or Perpetual.

V. *PERSONNEL ISSUES*

There are no significant personnel issues at Peoples or Perpetual.

The new President of First Federal has a contract with the institution. This contract is attached as Exhibit S-9. The contract may be terminated by either party at any time and for any reason by giving thirty (30 days written notice to the other party, but any termination by the board of directors of First Federal other than termination for cause, shall not prejudice the Manager's right to compensation or other benefits under the contract.

VI. *ACCOUNTING ISSUES*

The proposed transaction will be accounted for according to Generally Accepted Accounting Principles (GAAP).

VIII. *SERVICE CORPORATION ISSUES*

There are no significant service corporation issues at Peoples related to this transaction.

One of First Federal's second tier service corporation, Combined Mortgage, Phoenix, Arizona, is jointly owned with Occidental/Nebraska Federal Savings Bank, Omaha, Nebraska. There are no other significant service corporation issues at First Federal related to this transaction. One of Perpetual's three services corporations, Perpetual Services Corporation, engages in real estate sales. This activity, which is permitted under the Iowa regulations governing states chartered institutions, is not permitted under Federal Regulations (Section 545.74). If the resulting institution is federally chartered, this issue will need to be addressed.

VIII. *FIDELITY BOND/D&O POLICY*

First Federal's fidelity bond and D&O coverage was canceled on August 20, 1985. A discovery bond was purchased at that time for a three month period. The institution has not been able to obtain a fidelity bond or D&O coverage since the cancellation.

Peoples' fidelity bond expired November 22, 1987, and the institution has been unable to obtain coverage elsewhere.

Perpetual's surety bond expired in April 25, 1987, and the institution has been unable to obtain coverage elsewhere.

Daniel T. McKee, Supervisory Agent

John A. Pringle, Supervisory Agent

Attachments
cc: Roger Lerner, MAD, FSLIC
Michael Fanaroff, MAD, FSLIC
Eric Berg, OGC, FHLBB
John Wooten, ORPOS
Jay Jupiter, MAD, FSLIC

March 11, 1988

Office of Regulatory Policy

Oversight and Supervison

Memorandum for: John M. Buckley, Jr.
Executive Secretary to the Board

From: Darrel W. Dochow
Executive Director

Subject: FSLIC-Assisted Acquisition of:
First Federal Savings Bank
Waterloo, IA
FHLBB No. 2321

Assets:	$152.4 million
Liabilities:	$196.8 million
Reg. Capital:	($44.4) million
RC/Liabs.:	(29.1%)

and
Peoples FS&LA
Waterloo, IA
FHLBB No. 5965

Assets:	$152.4 million
Liabilities:	$154.8 million
Reg. Capital:	($2.4) million
RC/Liabs.:	(1.6%)

and
Perpetual S&LA
Waterloo, IA
FHLBB No. 4477

Assets:	$118.9 million
Liabilities:	$123.6 million

Reg. Capital:	($4.7) million
RC/Liabs.:	(4.0%)

and
First Federated Savings Bank
North Palm Beach, FL
FHLBB No. 6823

Assets:	$142.7 million
Liabilities:	$180.9 million
Reg. Capital:	($38.2) million
RC/Liabs.:	(26.8%)

by
Statesman Group, Inc.
Des Moines, IA
Private Investor

Assets:	$1,192.1 million
Liabilities:	$1,131.2 million
Stockholders Equity:	$60.9 million
SE/Liabs.:	5.1%

(Association data as of 12/31/87)
(Statesman data as of 9/30/87)

EXECUTIVE SUMMARY

ISSUE

Whether the Board should approve the FSLIC-assisted acquisitions of First Federal SB, Waterloo, IA ("First"), Peoples FS&LA, Waterloo, IA ("Peoples"), Perpetual S&LA, Waterloo, IA ("Perpetual"), and First Federated, North Palm Beach, FL ("Federated") by the Statesman Group, Inc. ("Statesman").

BACKGROUND

First attempted to grow out of it's early 1980's loan difficulties by engaging in a policy of nationwide commercial lending. The association grew over 90 percent in 20 months, but the operations of First remained unprofitable. The association is currently carrying on the books numerous nonperforming commercial and acquisition, development and construction loans.

Peoples' difficulties are attributable to the high level of delinquent 1-4 family mortgages, real estate owned, and real estate in judgment. The economy in the Waterloo area is weak resulting in a high level of unemployment and a decrease in housing values. In addition, unreserved loan losses currently exceed $2.5 million.

Perpetual has agreed to establish a loan loss reserve of $2.7 million in connection with problem secondary mortgage loans purchased from the now defunct First American Mortgage Company. Furthermore, the association is located in a depressed area and scheduled items are quite high.

Federated's problems stem primarily from the manner in which the mortgage banking subsidiary was operated. The subsidiary's mortgage servicing portfolio was comprised largely of servicing rights on high coupon loans purchased at significant premiums. The prepayment of the underlying loans has resulted in significant writedowns of the abovementioned premiums. The association has also experienced management and lending difficulties.

TRANSACTION

The Statesman Group, Inc. ("Statesman") will issue $12.6 million in preferred stock to Statesman Savings Holding Company ("SSHC") which will be used as partial capitalization of SSHC. The other portion of the capitalization of SSHC will be cash of $8.4 million from American Life and Casualty Company in exchange for common stock. SSHC will in turn issue $12.6 million in preferred stock to the Statesman and pass $8.4 million in cash, $12.6 million in preferred stock, and $5 million in subordinated debentures through to Statesman Bank for Savings, SB ("SBS"). SBS will then purchase substantially all the assets and liabilities of First, Peoples, Perpetual, and Federated.

FORBEARANCES

It is proposed that the following forbearances be granted in connection with the acquisition:

1. Where scheduled items are referred to in the regulation, assets of First, Peoples, Perpetual, and Federated that are scheduled items or become classified assets shall be excluded for a period of five years following the acquisition from any computation which requires the inclusion of such assets.

2. For a period not to exceed five years following the acquisition, FSLIC will not exercise its authority under Section 563.13 for a failure to meet the regulatory capital requirements due to the acquired scheduled items.

3. For one year following the acquisition, liquidity penalties will not be assessed if the deficiency results from a liquidity deficiency existing at the time of the acquisition or from aggregate net withdrawals from the existing offices of First, Peoples, Perpetual, or Federated.

4. It is the FSLIC's intention that $21 million of the cash contribution to be made to SBS pursuant to an assistance agreement to be entered into between the FSLIC and SBS is to be a credit to SBS regulatory capital; therefore, for regulatory accounting purposes, SBS may book such contribution as a direct addition to its regulatory capital.

5. SBS shall be given a reasonable period of time, but not to exceed 3 years, to phase out, dispose of or discontinue in an orderly manner, any acquired investments, activities, or operations inconsistent with the Home Owners' Loan Act of 1933, as amended.

6. SBS shall not for a period not to exceed 3 years, be deemed in violation of any of the provisions of Section 545.74 (Service Corporations) for investments acquired as part of the merger.

7. The Bank Board shall forbear from taking action due to SBS' violations of the holding company regulations regarding the acceptance and holding of specified securities of its parent holding company. In addition, the Bank Board will forbear from taking any supervisory/enforcement action due to the institution's violation of the equity risk investment limitations due to its acceptance and holding of the specified securities of its parent holding company.

AFFILIATED TRANSACTIONS

The applicant has requested waivers for numerous affiliated transactions such as, the servicing of SBS' loans through Statesman's mortgage subsidiary, providing adjustable rate loans and a line of credit to the mortgage subsidiary, and allowing Statesman to borrow from the institution and provide management services to the same. The applicant has requested that SBS be allowed to purchase GNMA and other securities from Statesman's mortgage company.

To allow for such affiliated transactions this Office recommends several restrictions and guidelines:

1. Statesman and SBS must maintain documentation to justify the affiliated transactions and ensure that they are fair to and in the best interest of the institution.

2. The PSA may revoke any approved affiliated transactions that are judged not to be fair or in the best interest of the institution.

3. Affiliated transactions are to be limited to existing lines of business.

4. The institution shall submit in advance an annual report to the PSA indicating the actual types and volumes of affiliated transactions.

CROSS-MARKETING

Statesman has requested the ability to market a variety of insurance products through the institution's branches and to utilize Statesman's and SBS' customer bases for direct and personal solicitation. In addition, the applicant proposes to set up brokerage services within the branches and utilize the broker to trade for SBS' account.

ORPOS does not object to the cross-marketing as long as the purchasers of the insurance products are made aware that there is no link between the insurance products and FSLIC insurance. Furthermore, the products to be marketed will be restricted to existing products being offered by Statesman unless approved by the PSA.

DEBT APPROVAL

Pursuant to be applicant attaining non-diversified status, there will be a Proposed Debt Budget filed with the PSA by the applicant to cover any contemplated debt for a given fiscal year.

LOANS

Loans aggregating $30 million, a $20 million loan and a $10 million loan to the Employee Stock Ownership Plan which is guaranteed by Statesman, currently in affect with Bank One, can be place on SBS' books with the same rates, terms, restrictive covenants, and collateralization. A $17 million loan will also be allowed to cover payments to the Government National Mortgage Association for three months. At the end of the three months that loan will be reduced to $15 million for a period not to exceed 12 months in total duration.

RECOMMENDATIONS

The Supervisory Agent's recommendation as well as a more detailed history of the disappearing institutions is contained in the attached memorandum. This Office has no objection to the Supervisory Agent's recommendation for approval.

FEDERAL HOME LOAN BANK
BOARD MEETING
(Closed Session)

March 11th, 1988

M. DANNY WALL,
Chairman

ROGER MARTIN,
Board Member

LAWRENCE WHITE,
Board Member

REDACTED

MS. BROOKINGS: There's an additional exhibit that needs to be entered into the record. It's Exhibit I-4. It's the viability and revised proposal costing, the cost of the transaction, our net present value basis. (Inaudible)—has provided us with a range of $154 million to $157 million, depending on various scenarios. The cost of liquidations estimated to be $207 million for these four institutions; thereby, a proposal of approximately 75 percent of the cost of liquidation.

The proposal before the Board represents four previous liquidation candidates, which staff has successfully negotiated a transaction of approximately 75 percent of the cost of liquidation by working with an acquirer who had specialized interest. This brings new capital into the industry and provides a substantial upside to the FSLIC in order to return on our investment.

It's, therefore, the staff of the Federal Home Loan Bank in Atlanta, the Federal Home Loan Bank of Des Moines, the Office of Regulatory Policy Oversight and Supervision, the Office of General Counsel and FSLIC's recommendation that the Bank Board approve this transaction.

CHAIRMAN WALL: I would make the observation that this has been quite an undertaking, as has just been identified by virtue of all of the people who have been involved in the process, and that the process has involved as a result many different people from many of the different aspects of the system and, of course, four different institutions, which itself is no simple matter.

I recognize and want to acknowledge the fact that staff has put in just incredible hours and effort in this particular undertaking with confusions and with

problems of deadlines and such having occurred and/or having been revised, and perhaps having been revised again. I do want to acknowledge, commend and thank everybody who has been involved in the process.

I think this particular step as far as the Federal Home Loan Bank Board and the system is concerned is going to be seen as a significant one because there are many significant signs and signals being given by this action. So I think it's important that we will have disposed of it and put it out for public perusal, whether it be just from the standpoint of what FSLIC is doing or whether it be from the standpoint of those who have been looking at such possibilities from their own point of view in terms of their own investment opportunities.

It seems to me that it's important that in light of the pressure that the people have been under as we've approached this meeting today that if anyone in this process is concerned or has a significant question whether or not this is the appropriate package, I want to hear from that person or those people at this point. I don't want anyone to feel we have been pressuring in a precipitous way this decision. I think it's appropriate, and it's just

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AND
PLAN OF MERGER

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RECITALS

1. SBS has been organized and chartered as a federal stock savings bank pursuant to § 406(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) (1982).

2. It is deemed to be in the best interests of the members of the MERGING ASSOCIATION and the sole stockholder of SBS that such institutions effect a merger upon the terms and conditions stated in this Agreement ("Merger").

3. It is believed that the Merger will enable SBS to establish and maintain savings, mortgage and other services.

4. The Merger is authorized by § 5 of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464 (1982), and the rules and regulations promulgated under and pursuant to the HOLA and the NHA by the FEDERAL HOME LOAN BANK BOARD ("BANK BOARD").

5. The following agreement is entered into in consideration of the mutual promises contained in this Agreement.

AGREEMENT

§ 1 *Merger.* The MERGING ASSOCIATION shall merge with and into SBS.

§ 2 *RESULTING ASSOCIATION.* The RESULTING ASSOCIATION shall be STATEMAN BANK FOR SAVINGS, FSB, Waterloo, Iowa.

§ 3 *Name of the RESULTING ASSOCIATION.* The name of the RESULTING ASSOCIATION shall be STATESMAN BANK FOR SAVINGS, FSB.

§ 4 *Home Office of the RESULTING ASSOCIATION.* The home office of the RESULTING ASSOCIATION shall be located at Fourth and Mulberry, Waterloo, Iowa, the present home office of the MERGING ASSOCIATION.

§ 5 *Charter and Bylaws of the RESULTING ASSOCIATION.* After the Merger, the RESULTING ASSOCIATION shall operate under the charter and bylaws of SBS.

§ 6 *Directors of the RESULTING ASSOCIATION.* The number of directors of the RESULTING ASSOCIATION shall be 7. The names and addresses of those persons who shall serve as directors of the RESULTING ASSOCIATION and the expiration dates of their terms are listed on Exhibit A attached hereto, which constitutes a part of this Agreement.

§ 7 *Officers.* The existing officers of SBS shall be the officers of the RESULTING ASSOCIATION.

§ 8 *Branch Offices of the RESULTING ASSOCIATION.* After the Merger, the branch offices of the RESULTING ASSOCIATION shall include all the branch offices of the MERGING ASSOCIATION. The addresses of the offices that will be branch offices of the RESULTING ASSOCIATION are listed on Exhibit B attached hereto, which constitutes a part of this Agreement.

§ 9 *Accounts.* Upon the effective date of the Merger ("Effective Date"), each accountholder of the MERGING ASSOCIATION shall receive, without payment, a withdrawable account or accounts in the RESULTING ASSOCIATION equal in withdrawal value to the account or accounts held in the MERGING ASSOCIATION on such date, featuring the same rate, maturity and other terms, except that holders of such accounts shall not be members of the RESULTING ASSOCIATION, shall have no voting rights in the RESULTING ASSOCIATION and shall have no rights to participate in the equity of the RESULTING ASSOCIATION upon liquidation or otherwise.

§ 10 *Transfer of Assets and Liabilities upon Merger.* Upon the Effective Date, all of the assets and property of every kind or character, real, personal and mixed, tangible and intangible, choses in action, rights and credits, then owned by the MERGING ASSOCIATION, or that would inure to it, shall immediately by operation of law and without the necessity of any instrument of conveyance or transfer and without any further act or deed be vested in and become the property of the RESULTING ASSOCIATION, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same were possessed, held and enjoyed by the MERGING ASSOCIATION prior to the Merger. The RESULTING ASSOCIATION shall be deemed to be and shall be a continuation of the entity and identity of SBS. All of the rights and obligations of the MERGING ASSOCIATION shall remain unimpaired, and the RESULTING ASSOCIATION shall, on the Effective Date, succeed to all of such rights and obligations and the duties connected with them.

§ 11 *Stock.* Upon the Effective Date, each share of SBS capital stock outstanding immediately prior to

such date shall remain outstanding as a share of the RESULTING ASSOCIATION's stock. Upon the Effective Date, all voting rights of borrowers or accountholders of the MERGING ASSOCIATION shall cease, and all voting rights in the RESULTING ASSOCIATION shall be vested in and exercisable by the sole stockholder of the RESULTING ASSOCIATION. No stock of the RESULTING ASSOCIATION shall be received or distributed in connection with the Merger.

§ 12 *Effective Date of Merger.* The transactions contemplated by this Agreement shall be effective only when approved by the BANK BOARD. The Effective Date of the Merger shall be a date determined by the BANK BOARD in accordance with its resolution approving the Merger.

§ 13 *Further Actions.* All of the transactions contemplated by this Agreement have been or will be authorized by all necessary corporate action of each institution. Both institutions by their proper officers shall execute and deliver all instruments, certificates and other documents as may be necessary or incidental to the performance of this Agreement.

§ 14 *Condition of the MERGING ASSOCIATION.* The RESULTING ASSOCIATION acknowledges that it is familiar with the present financial condition of the MERGING ASSOCIATION and of the deterioration of the assets, business and operations of the MERGING ASSOCIATION.

§ 15 *Counterparts, Modifications, Headings.*

(a) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party may execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 16 *Entire Agreement, Severability.*

(a) This Agreement, together with any interpretation or understanding agreed to in writing by the parties, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection with it.

(b) If any provision of this Agreement is invalid or unenforceable, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the MERGING ASSOCIATION and the RESULTING ASSOCIATION.

§ 17 *Governing Law.* This Agreement and the rights and obligations under it shall be governed by the laws of the State of Iowa to the extent that federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 18 *Sole Benefit.* Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the RESULTING ASSOCIATION or the MERGING ASSOCIATION any legal or equitable right, remedy, or claim under, or in respect to, this Agreement, it being the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all of its conditions and

provisions are for the sole benefit of the RESULTING ASSOCIATION and the MERGING ASSOCIATION and for the benefit of no other person.

§ 19 *Acknowledgment.* Each party to this Agreement, by the execution of this Agreement, acknowledges and affirms that its board of directors has, by at least a two-thirds vote, approved this Agreement and the Merger, authorized the execution of this Agreement, empowered its signatories to execute this Agreement, and authorized the filing of this Agreement with the BANK BOARD.

§ 20 *Conditions.* This Agreement is conditioned upon the execution of an Assistance Agreement among the Federal Savings and Loan Insurance Corporation, the RESULTING ASSOCIATION, The Statesman Group, Inc., Des Moines, Iowa, American Life and Casualty Insurance Company, Fargo, North Dakota, and Statesman Savings Holding Corp., Des Moines, Iowa.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf by their duly authorized agents.

ATTESTED:	STATESMAN BANK FOR SAVING FSB
By: _____	By: _____
Its: _____	Its: _____
Date: _____	
ATTESTED:	FIRST FEDERAL SAVINGS BANK
By: _____	By: _____
Its: _____	Its: _____
Date: _____	

MERGER AGREEMENT
AND
PLAN OF MERGER

THIS MERGER AGREEMENT is made and entered into as of the 11th day of March, 1988, by and between PEOPLES FEDERAL SAVINGS AND LOAN ASSOCIATION, Waterloo, Iowa ("MERGING ASSOCIATION"), and STATESMAN BANK FOR SAVINGS, FSB, Waterloo, Iowa ("SBS" or "RESULTING ASSOCIATION").

RECITALS

1. SBS has been organized and chartered as a federal stock savings bank pursuant to § 406(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) (1982).

2. It is deemed to be in the best interests of the members of the MERGING ASSOCIATION and the sole stockholder of SBS that such institutions effect a merger upon the terms and conditions stated in this Agreement ("Merger").

3. It is believed that the Merger will enable SBS to establish and maintain savings, mortgage and other services.

4. The Merger is authorized by § 5 of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. § 1464 (1982), and the rules and regulations promulgated under and pursuant to the HOLA and the NHA by the FEDERAL HOME LOAN BANK BOARD ("BANK BOARD").

5. The following agreement is entered into in consideration of the mutual promises contained in this Agreement.

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such date shall remain outstanding as a share of the RESULTING ASSOCIATION's stock. Upon the Effective Date, all voting rights of borrowers or accountholders of the MERGING ASSOCIATION shall cease, and all voting rights in the RESULTING ASSOCIATION shall be vested in and exercisable by the sole stockholder of the RESULTING ASSOCIATION. No stock of the RESULTING ASSOCIATION shall be received or distributed in connection with the Merger.

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provisions are for the sole benefit of the RESULTING ASSOCIATION and the MERGING ASSOCIATION and for the benefit of no other person.

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IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf by their duly authorized agents.

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Its: _____	Its: _____
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§ 8 *Branch Offices of the RESULTING ASSOCIATION.* After the Merger, the branch offices of the RESULTING ASSOCIATION shall include the present home and branch offices of the MERGING ASSOCIATION. The addresses of the offices that will be branch offices of the RESULTING ASSOCIATION are listed on Exhibit B attached hereto, which constitutes a part of this Agreement.

§ 9 *Accounts.* Upon the effective date of the Merger ("Effective Date"), each accountholder of the MERGING ASSOCIATION shall receive, without payment, a withdrawable account or accounts in the RESULTING ASSOCIATION equal in withdrawal value to the account or accounts held in the MERGING ASSOCIATION on such date, featuring the same rate, maturity and other terms, except that holders of such accounts shall not be members of the RESULTING ASSOCIATION, shall have no voting rights in the RESULTING ASSOCIATION and shall have no rights to participate in the equity of the RESULTING ASSOCIATION upon liquidation or otherwise.

§ 10 *Transfer of Assets and Liabilities upon Merger.* Upon the Effective Date, all of the assets and property of every kind or character, real, personal and mixed, tangible and intangible, choses in action, rights and credits, then owned by the MERGING ASSOCIATION, or that would inure to it, shall immediately by operation of law and without the necessity of any instrument of conveyance or transfer and without any further act or deed be vested in and become the property of the RESULTING ASSOCIATION, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same were possessed, held and enjoyed by the MERGING ASSOCIATION prior to the Merger. The RESULTING ASSOCIATION shall be deemed to be and shall be a continuation of the entity and identity of SBS. All of the rights and obligations of the MERGING ASSOCIATION shall remain unimpaired, and the RESULTING ASSOCIATION shall, on the Effective Date, succeed to all of such rights and obligations and the duties connected with them.

§ 11 *Stock.* Upon the Effective Date, each share of SBS capital stock outstanding immediately prior to

such date shall remain outstanding as a share of the RESULTING ASSOCIATION's stock. Upon the Effective Date, all voting rights of borrowers or accountholders of the MERGING ASSOCIATION shall cease, and all voting rights in the RESULTING ASSOCIATION shall be vested in and exercisable by the sole stockholder of the RESULTING ASSOCIATION. No stock of the RESULTING ASSOCIATION shall be received or distributed in connection with the Merger.

§ 12 *Effective Date of Merger.* The transactions contemplated by this Agreement shall be effective only when approved by the BANK BOARD and the Superintendent of Savings and Loans, State of Iowa. The Effective Date of the Merger shall be a date determined by the BANK BOARD in accordance with its resolution approving the Merger.

§ 13 *Further Actions.* All of the transactions contemplated by this Agreement have been or will be authorized by all necessary corporate action of each institution. Both institutions by their proper officers shall execute and deliver all instruments, certificates and other documents as may be necessary or incidental to the performance of this Agreement.

§ 14 *Condition of the MERGING ASSOCIATION.* The RESULTING ASSOCIATION acknowledges that it is familiar with the present financial condition of the MERGING ASSOCIATION and of the deterioration of the assets, business and operations of the MERGING ASSOCIATION.

§ 15 *Counterparts, Modifications, Headings.*

(a) This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party may execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 16 *Entire Agreement, Severability.*

(a) This Agreement, together with any interpretation or understanding agreed to in writing by the parties, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection with it.

(b) If any provision of this Agreement is invalid or unenforceable, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the MERGING ASSOCIATION and the RESULTING ASSOCIATION.

§ 17 *Governing Law.* This Agreement and the rights and obligations under it shall be governed by the laws of the State of Iowa to the extent that federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 18 *Sole Benefit.* Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the RESULTING ASSOCIATION or the MERGING ASSOCIATION any legal or equitable right, remedy, or claim under, or in respect to, this Agreement, it being the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all of its conditions and

provisions are for the sole benefit of the RESULTING ASSOCIATION and the MERGING ASSOCIATION and for the benefit of no other person.

§ 19 *Acknowledgment.* Each party to this Agreement, by the execution of this Agreement, acknowledges and affirms that its board of directors has, by at least a two-thirds vote, approved this Agreement and the Merger, authorized the execution of this Agreement, empowered its signatories to execute this Agreement, and authorized the filing of this Agreement with the BANK BOARD.

§ 20 *Conditions.* This Agreement is conditioned upon the execution of an Assistance Agreement among the Federal Savings and Loan Insurance Corporation, the RESULTING ASSOCIATION, The Statesman Group, Inc., Des Moines, Iowa, American Life and Casualty Insurance Company, Fargo, North Dakota, and Statesman Savings Holding Corp., Des Moines, Iowa.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on their behalf by their duly authorized agents.

ATTESTED:	STATESMAN BANK FOR SAVING FSB
By: _____	By: _____
Its: _____	Its: _____
Date: _____	
ATTESTED:	PERPETUAL SAVINGS AND LOAN ASSOCIATION, by the Federal Savings and Loan Insurance Corporation as Conservator
By: _____	By: _____
Its: _____	Its: Special Representative
Date: _____	

ACQUISITION AGREEMENT BETWEEN THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

AS RECEIVER FOR
FIRST FEDERATED SAVINGS BANK
WEST PALM BEACH, FLORIDA

AND

STATESMAN BANK FOR SAVINGS, FSB
WATERLOO, IOWA

Dated: March 11, 1988

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THE FEDERAL SAVINGS AND
LOAN INSURANCE CORPORATION
AS RECEIVER FOR
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WEST PALM BEACH, FLORIDA

AND

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WATERLOO, IOWA

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ACQUISITION AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of March, 1988, by and between the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, in its capacity as Receiver for FIRST FEDERATED SAVINGS BANK, West Palm Beach, Florida (respectively, "RECEIVER" and "CLOSED ASSOCIATION"), and STATESMAN BANK FOR SAVINGS, FSB, Waterloo, Iowa ("ACQUIRING ASSOCIATION").

RECITALS

A. The CLOSED ASSOCIATION is a stock savings bank organized under the laws of the State of Florida, the accounts of which are insured by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION in its capacity as a corporate instrumentality of the United States ("CORPORATION").

B. The FEDERAL HOME LOAN BANK BOARD ("BANK BOARD"), by its Resolution No. 88, dated March 11, 1988, duly appointed the CORPORATION as RECEIVER for the CLOSED ASSOCIATION, and the RECEIVER's appointment has become effective.

C. The RECEIVER has taken possession of the CLOSED ASSOCIATION and by operation of law has succeeded to all the rights, titles, powers, and privileges of the CLOSED ASSOCIATION.

D. The ACQUIRING ASSOCIATION is a stock savings bank organized under the laws of the United States, the accounts of which are insured by the CORPORATION.

E. It has been mutually agreed between the ACQUIRING ASSOCIATION and the RECEIVER,

and the BANK BOARD has determined that it is in the best interests of the CLOSED ASSOCIATION, its savers, and the CORPORATION, that substantially all of the CLOSED ASSOCIATION's assets, all of its deposits or withdrawable accounts, and substantially all of its other liabilities be immediately transferred to and assumed by the ACQUIRING ASSOCIATION, as provided in this Agreement.

F. In consideration of the foregoing and of the mutual covenants and agreements contained herein, the RECEIVER and the ACQUIRING ASSOCIATION enter into the following agreement.

AGREEMENT

§ 1 *Purchase of Assets.* The RECEIVER hereby sells to the ACQUIRING ASSOCIATION, and the ACQUIRING ASSOCIATION hereby purchases from the RECEIVER, all of the RECEIVER's right, title, and interest in and to all of the CLOSED ASSOCIATION's assets that the RECEIVER owns or holds and any of the CLOSED ASSOCIATION's assets hereafter acquired by the RECEIVER, excluding, however: (a) any known or unknown claim, demand, cause of action, or judgment (i) against the CLOSED ASSOCIATION's or any of its subsidiaries' present or former employees, agents, or controlling persons, directors, officers, or other persons, directly or indirectly exercising a controlling influence over the management or policies of the CLOSED ASSOCIATION or any of its subsidiaries, (ii) against any stockholder of the CLOSED ASSOCIATION, (iii) against any appraiser, accountant, auditor, attorney, investment banker or broker, loan broker, deposit broker, securities dealer, or other professional individual or entity performing services for the CLOSED

ASSOCIATION, and (iv) against any administrator, executor, personal representative, heir, assign, director or officer of any person or entity identified in § 1(a)(i), (ii) or (iii), arising out of any act(s) or omission(s) of such person or entity prior to the effective date with respect to the CLOSED ASSOCIATION or its property, or any of its subsidiaries or the subsidiaries' property; (b) any known or unknown claim, demand, cause of action or judgment against a surety for any person or entity identified in § 1(a)(i), (ii), (iii) or (iv), including any insurer who may be liable for indemnification for the loss caused by the action or inaction of any such person or entity; (c) any claim against counsel for the CLOSED ASSOCIATION for recovery of sums paid by the CLOSED ASSOCIATION to challenge the receivership or contemporary or subsequent actions of the BANK BOARD or the CORPORATION; and (d) such limited items, parts, or portions of the CLOSED ASSOCIATION's books and records as are specifically identified by the RECEIVER, *provided* that the ACQUIRING ASSOCIATION consents to the RECEIVER's retention of such records (the "excluded papers").

§ 2 *Assumption of Liabilities.* The ACQUIRING ASSOCIATION hereby expressly assumes and agrees to pay, perform, and discharge all of the CLOSED ASSOCIATION's liabilities, including, but not limited to, those shown on the CLOSED ASSOCIATION's books and records at such time as the RECEIVER takes possession of the CLOSED ASSOCIATION, but excluding, however, obligations under any compensation or employment contract between the CLOSED ASSOCIATION and any of its employees, officers, or directors, other than obligations to honor or satisfy and right already vested under such contracts. The term "liability" as used in

this section does not refer to any obligation of the CLOSED ASSOCIATION to its stockholders arising out of or related in any way to their stock holdings (including claims for damages or rescission arising from the purchase or sale of such stock holdings) or any obligation to indemnify controlling persons, directors, officers or other persons as a result of suits arising from claims described in § 1, and the ACQUIRING ASSOCIATION specifically does not assume by virtue of this Agreement any such obligations to the stockholders or for indemnification of the controlling persons, directors, officers or other persons. For the purposes of this Agreement, "stockholder" means a holder of stock; and "stock" includes a nonwithdrawable account, as defined by 12 C.F.R. § 561.42 (1987), stock, permanent stock, guarantee stock, common stock, preferred stock, and subordinated debt issued by the CLOSED ASSOCIATION.

§ 3 *Records.*

(a) The ACQUIRING ASSOCIATION acknowledges that the RECEIVER is delivering to it, among the assets sold and purchased under § 1 of this Agreement, all of the CLOSED ASSOCIATION's books and records, except the excluded papers, if any.

(b) The ACQUIRING ASSOCIATION agrees to preserve and keep safe all of the CLOSED ASSOCIATION's books and records that it acquires pursuant to this Agreement, to permit the RECEIVER at any reasonable time to inspect, make extracts from or copies of any of such books and records, and to cooperate fully with the RECEIVER in the preparation of the inventory described below.

(c) As a condition of this Agreement, the ACQUIRING ASSOCIATION agrees, at its own expense, either to segregate and keep separate or, in the alternative and at the option of the ACQUIRING

ASSOCIATION, to reconstruct, as of the date of this Agreement, the CLOSED ASSOCIATION's books and records transferred to it until the period in which the CLOSED ASSOCIATION may file an action for removal of the RECEIVER pursuant to law has expired, or, if such action is filed, until the dismissal of such action or the issuance of an order determining an appeal from any order of a court directing the removal of the RECEIVER.

§ 4 *Inventory.* As soon as is practicable after the effective date of this Agreement, the RECEIVER shall make, or cause to be made, an inventory of the CLOSED ASSOCIATION's assets and a record of its liabilities, as directed by the BANK BOARD. The RECEIVER shall furnish a copy of the inventory of the CLOSED ASSOCIATION's assets and record of its liabilities to the ACQUIRING ASSOCIATION upon their completion.

§ 5 *Purchase Price.* The purchase price of all assets sold to the ACQUIRING ASSOCIATION pursuant to § 1 shall be the assumption of liabilities provided for in § 2.

§ 6 *Duties With Respect to Savers.*

(a) The ACQUIRING ASSOCIATION agrees to pay, in accordance with the provisions of applicable law and the individual contracts governing the CLOSED ASSOCIATION's deposits or withdrawable accounts, all properly drawn and presented withdrawal requests by the CLOSED ASSOCIATION's depositors or withdrawable accountholders whose deposits or accounts are assumed by the ACQUIRING ASSOCIATION pursuant to § 2 of this Agreement, to the extent that such deposits or withdrawable account balances are sufficient to permit such payments and in compliance with the contractual terms of such deposits and accounts, and in all other

respects to discharge, in the usual course of business, the CLOSED ASSOCIATION's duties and obligations with respect to its depositors or accountholders, *provided,* however, that the ACQUIRING ASSOCIATION does not assume any special or unusual duties of the CLOSED ASSOCIATION to such depositors or accountholders unless the terms of such duties are disclosed in the CLOSED ASSOCIATION's records. Further, in accordance with applicable law and the individual contracts governing such deposits or accounts, the ACQUIRING ASSOCIATION agrees to pay interest on all of the CLOSED ASSOCIATION's deposits and withdrawable accounts that are assumed pursuant to § 2 of this Agreement.

(b) If any such depositors or withdrawable accountholders decline to accept the obligation of the ACQUIRING ASSOCIATION to pay the CLOSED ASSOCIATION's deposit or account liabilities assumed pursuant to § 2 of this Agreement and asserts a claim against the RECEIVER for any part of such assumed deposit liabilities, the ACQUIRING ASSOCIATION shall provide the RECEIVER, upon demand, with an amount of money sufficient to enable it to pay the claims of such depositors or accountholders, less any applicable early withdrawal penalties, not exceeding the amount credited to such persons on the ACQUIRING ASSOCIATION's records at the time such demand is made, and, upon paying the RECEIVER as so demanded, the ACQUIRING ASSOCIATION shall be discharged from any further liability for such claim under this Agreement.

(c) The ACQUIRING ASSOCIATION shall given written notice, in a form approved by the RECEIVER or its counsel, to the CLOSED ASSOCIATION's depositors and withdrawable accountholders

whose deposits or accounts are assumed by the ACQUIRING ASSOCIATION pursuant to § 2 of this Agreement of its assumption of liability for such deposits or accounts.

§ 7 *Office Space for the RECEIVER.* The ACQUIRING ASSOCIATION agrees to provide the RECEIVER, without charge and, if its duties so require, for a period of one year from the date of this Agreement, adequate space, including vault space and furnishings, for the RECEIVER's use in connection with the transfers and transactions required by this Agreement and with the exercise and discharge of its powers and duties as receiver of the CLOSED ASSOCIATION. After such period, the ACQUIRING ASSOCIATION shall continue to provide to the RECEIVER, at a reasonable rental to be agreed upon by the parties, such space and furnishings for such period as the RECEIVER may request.

§ 8 *Litigation; Power of Attorney.* In the event that any action at law or in equity in which the RECEIVER has an interest is instituted by any person against the CLOSED ASSOCIATION, the ACQUIRING ASSOCIATION, or both of them, or against the RECEIVER and either or both of the foregoing as co-defendants, or in which action the RECEIVER joins or is joined as co-defendant, the ACQUIRING ASSOCIATION agrees to file, or to join with the RECEIVER in filing, a petition to remove the action to an appropriate court, and hereby authorizes and appoints, as its attorney for the purpose of effecting such removal, any attorney designated or approved by the RECEIVER to act in that capacity.

§ 9 *Rights and Forbearance.* The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies

given by any applicable statute or rule of law. Any forbearance, failure, or delay by either party in exercising or partially exercising any right, power, or remedy shall not preclude the further exercise of such right, power, or remedy.

§ 10 *Sole Benefit.* It is the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all conditions and provisions of it, are for the sole benefit of the RECEIVER and the ACQUIRING ASSOCIATION and for the benefit of no other person. Nothing expressed or referred to in this Agreement is intended to or shall be construed to give any person other than the RECEIVER or the ACQUIRING ASSOCIATION any legal or equitable right, remedy, or claim under or with respect to this Agreement or any of its provisions.

§ 11 *Successors and Assigns.* All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective transferees, successors, and assigns, but this Agreement may not be assigned nor may any rights under it be transferred to or vested in any other party, through merger, consolidation, or otherwise, without the prior written consent of the CORPORATION.

§ 12 *Notices.* Any notice, request, demand, or other communication to either of the parties shall be deemed given when received and shall be given in writing and delivered in person or sent by first class mail in a prepaid envelope to such party at its address set forth below or at such other address as such party shall hereafter furnish in writing:

Statesman Bank for Savings, FSB
Fourth and Mulberry
Waterloo, Iowa 50704
Attn: President

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION
As Receiver for First Federated Savings Bank
1700 G Street, N.W.
Washington, D.C. 20552
Attn: Special Representative

§ 13 *Accounting Principles.* Except as otherwise provided in this Agreement, any computations made for the purposes of this Agreement shall be governed by generally accepted accounting principles as applied in the savings and loan industry, except that where such principles conflict with the terms of this Agreement, any assistance agreement or agreements to which the ACQUIRING ASSOCIATION and the CORPORATION are parties, including, but not limited to, an agreement to make a contribution or loan, an agreement to purchase subordinated debt, or an agreement to issue and purchase Income Capital Certificates, applicable regulations of the BANK BOARD or the CORPORATION, or any resolution or action of the BANK BOARD or CORPORATION approving, or adopted concurrently with, this Agreement, then this Agreement, such assistance agreement, such regulations, and such resolutions or actions shall govern. In the case of any ambiguity in the interpretation or construction of any provision of this Agreement, such ambiguity shall be resolved in a manner consistent with such assistance agreement, such regulations, and the BANK BOARD's or the CORPORATION's resolutions or actions. If there is a conflict between this Agreement and such assistance

agreement or such regulations or reslutions or actions, then such assistance agreement or such regulations or resolutions or actions shall govern.

§ 14 *Governing Law.* To the extent that federal law does not control, this Agreement and the rights and obligations under it shall be governed by the law of the State of Iowa. Nothing in this Agreement shall require any unlawful action or inaction by either party.

§ 15 *Effective Date.* This Agreement, and the transfer of the CLOSED ASSOCIATION's assets and liabilities provided for by this Agreement, shall become effective upon its execution by the parties.

§ 16 *Entire Agreement; Severability.*

(a) This Agreement, together with any interpretation of it or any understanding agreed to in writing by the parties, constitutes the entire agreement between the ACQUIRING ASSOCIATION and the CORPORATION as RECEIVER, but not in its corporate capacity, in connection with the transactions contemplated by this Agreement, and supersedes all prior agreements and understandings of the parties, excepting only any resolutions or letters approved or adopted contemporaneously with this Agreement by the BANK BOARD or the CORPORATION.

(b) If any provision of this Agreement is invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties.

§ 17 *Counterparts; Modification; Headings.*

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument, and either party may

execute this Agreement by signing any such counterpart.

(b) No modification of this Agreement shall be binding unless executed in writing and signed by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

§ 18 *Warranties.*

(a) The RECEIVER warrants and represents that it has authority to enter into this Agreement and that, as RECEIVER, it has full power and authority to transfer the CLOSED ASSOCIATION's assets and liabilities as provided by this Agreement.

(b) The ACQUIRING ASSOCIATION warrants and represents that all of the transactions contemplated by this Agreement have been or will be authorized by all necessary corporate actions and that it, by its proper officers or agents, has executed this Agreement and shall execute and deliver all instruments, certificates, and other documents that may be necessary or incidental to the performance of this Agreement.

(c) These warranties shall survive the execution, performance, and termination of this Agreement.

§ 19 *Continuing Cooperation.* The RECEIVER agrees, upon the request of the ACQUIRING ASSOCIATION, to execute and deliver such further instruments and documents of conveyance as shall be necessary or proper to vest in the ACQUIRING ASSOCIATION the RECEIVER's full legal or equitable title to the property transferred to the ACQUIRING ASSOCIATION pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or agents.

Attest: Date: March 1, 1988	FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS RECEIVER FOR FIRST FEDERATED SAVINGS BANK
By: _____	By: _____
Attest:	STATESMAN BANK FOR SAVINGS, FSB
Date: March 11, 1988	
By: _____	By: _____
Its: _____	Its: _____

ASSISTANCE AGREEMENT
AMONG
THE FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION,

THE STATESMAN GROUP, INC.
Des Moines, Iowa,

AMERICAN LIFE AND CASUALTY
INSURANCE COMPANY
Fargo, North Dakota,

STATESMAN SAVINGS HOLDING CORP.
Des Moines, Iowa

AND

STATESMAN BANK FOR SAVINGS, FSB
Waterloo, Iowa

DATED March 11, 1988

SUMMARY OF SUBSTANTIVE PROVISIONS

Assistance Provided	Section in Agreement
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6. Indemnification for Undisclosed Liabilities, Unreserved for Claims, and Challenges to the Acquisition and the Mergers	§ 7

ASSISTANCE AGREEMENT
AMONG
THE FEDERAL SAVINGS AND
LOAN INSURANCE CORPORATION,

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INSURANCE COMPANY
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Des Moines, Iowa

AND

STATESMAN BANK FOR SAVINGS, FSB
Waterloo, Iowa

Date March 11, 1988

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Exhibit B: Form of Subordinated Debenture

ASSISTANCE AGREEMENT

THIS AGREEMENT, dated March 11, 1988, is entered into by and among THE STATESMAN GROUP, INC., a Delaware corporation ("STATESMAN"), AMERICAN LIFE AND CASUALTY INSURANCE COMPANY, a North Dakota corporation wholly owned by STATESMAN ("AMERICAN LIFE"), STATESMAN SAVINGS HOLDING CORP., Des Moines, Iowa, a savings and loan holding company incorporated under the laws of the State of Iowa and owned by STATESMAN and AMERICAN LIFE ("ACQUIRER"), STATESMAN BANK FOR SAVINGS, FSB, Waterloo, Iowa, a federal stock savings bank wholly owned by the ACQUIRER ("ACQUIRING ASSOCIATION"), and the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION ("FSLIC"), in its capacity as a corporate instrumentality and agency of the United States ("CORPORATION").

RECITALS

A. The ACQUIRING ASSOCIATION has been organized and chartered as a federal stock savings bank pursuant to § 406(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1729(a), (b)(1)(A), (c)(1)(B) and (c)(3)(B) (1982), and the ownership of the ACQUIRING ASSOCIATION to the ACQUIRER and the ownership of the ACQUIRER by STATESMAN and AMERICAN LIFE have been authorized by the Federal Home Loan Bank Board ("Bank Board") by Resolution No. 88-169, dated March ____, 1988, in accordance with § 408(e) and (m) of the NHA, 12 U.S.C § 1730a(e) and (m) (1982).

B. On March 11, 1988, the FSLIC was appointed receiver ("Receiver") for First Federated Savings Bank, West Palm Beach, Florida, a stock savings bank chartered under the laws of the State of Florida ("CLOSED ASSOCIATION"). The Bank Board, by Resolution No. 88–169, dated March 11, 1988, has authorized the ACQUIRING ASSOCIATION to purchase and assume substantially all of the assets and liabilities, respectively, of the CLOSED ASSOCIATION from the Receiver ("Acquisition") pursuant to the Acquisition Agreement ("Acquisition Agreement") of even date herewith between the Receiver and the ACQUIRING ASSOCIATION.

C. The Bank Board, by Resolution No. 88-169, dated March ____, 1988, has authorized the supervisory conversion of First Federal Savings Bank, Waterloo, Iowa, a federally-chartered mutual savings bank ("First Federal"), and the merger of First Federal with and into the ACQUIRING ASSOCIATION ("First Federal Merger"), pursuant to the Merger Agreement and Plan of Merger of even date herewith between First Federal and the ACQUIRING ASSOCIATION ("First Federal Merger Agreement").

D. The Bank Board, by Resolution No. 88-169, dated March ____, 1988, has authorized the supervisory conversion of The Perpetual Savings and Loan Association, Waterloo, Iowa, a mutual savings and loan association chartered under the laws of the State of Iowa ("Perpetual"), and the merger of Perpetual with and into the ACQUIRING ASSOCIATION ("Perpetual Merger"), pursuant to the Merger Agreement and Plan of Merger of even date herewith between Perpetual and the ACQUIRING ASSOCIATION ("Perpetual Merger Agreement").

E. The Bank Board, by Resolution No. 88–169, dated March ____, 1988, has authorized the supervisory

conversion of Peoples Federal Savings and Loan Association, Waterloo, Iowa, a federally-chartered mutual savings and loan association ("Peoples"), and the merger of Peoples with and into the ACQUIRING ASSOCIATION ("Peoples Merger"), pursuant to the Merger Agreement and Plan of Merger of even date herewith between Peoples and the ACQUIRING ASSOCIATION ("Peoples Merger Agreement").

F. First Federal, Perpetual and Peoples may be sometimes referred to herein individually as a "MERGED ASSOCIATION" and collectively as the "MERGED ASSOCIATIONS". The MERGED ASSOCIATIONS and the CLOSED ASSOCIATION may be sometimes referred to herein individually as an "ACQUIRED ASSOCIATION" and collectively as the "ACQUIRED ASSOCIATIONS". The First Federal Merger, the Perpetual Merger and the Peoples Merger may be sometimes referred to herein individually as a "Merger" and collectively as the "Mergers", and the First Federal Merger Agreement, the Perpetual Merger Agreement and the Peoples Merger Agreement may be sometimes referred to herein individually as a "Merger Agreement" and collectively as the "Merger Agreements".

G. The Bank Board, by Resolution No. 88-169, dated March ____, 1988, has certified for purposes of Section [illegible](a)(3)(D) of the Internal Revenue Code that the ground set forth in 12 U.S.C. § 1464(d)(6)(A)(i) exists with respect to each ACQUIRED ASSOCIATION in that each ACQUIRED ASSOCIATION is insolvent.

H. The CORPORATION insured the accounts of the CLOSED ASSOCIATION prior to the appointment of the Receiver and insured the accounts of each MERGED ASSOCIATION prior to the Mergers, and the CORPORATION will insure the accounts of the

ACQUIRING ASSOCIATION after the Acquisition and the Mergers, in accordance with § 403 of the National Housing Act, as amended ("NHA"), 12 U.S.C. § 1726 (1982).

I. The ACQUIRING ASSOCIATION, pursuant to the Acquisition Agreement, will succeed to substantially all of the rights, obligations, duties and liabilities of the CLOSED ASSOCIATION, and substantially all of the assets and property of every kind and character belonging to the CLOSED ASSOCIATION will be vested in and become the property of the ACQUIRING ASSOCIATION.

J. The ACQUIRING ASSOCIATION, pursuant to the Merger Agreements, will succeed to all of the rights, obligations, duties and liabilities of the MERGED ASSOCIATIONS, and all of the assets and property of every kind and character belonging to the MERGED ASSOCIATIONS will be vested in and become the property of the ACQUIRING ASSOCIATION.

K. A condition to the obligation of the ACQUIRING ASSOCIATION to consummate the Acquisition pursuant to the Acquisition Agreement, a condition to the obligations of the respective parties to the Mergers to consummate the Mergers pursuant to the Merger Agreements, and a condition of the ACQUIRER to acquire the common stock of the ACQUIRING ASSOCIATION, is that the CORPORATION, STATESMAN, AMERICAN LIFE, the ACQUIRER and the ACQUIRING ASSOCIATION enter into an agreement in the form of this Agreement, pursuant to which the CORPORATION will provide financial assistance and indemnification to the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE.

L. The CORPORATION has decided, pursuant to § 406(f)(1)-(4) of the NHA, 12 U.S.C. § 1729(f)(1)-(4)

(1982), to provide financial assistance and indemnification as set forth in this Agreement, having determined that each ACQUIRED ASSOCIATION is in danger of default and that the amounts payable pursuant to such assistance and indemnification would be less than the losses the CORPORATION would sustain upon the liquidation of the ACQUIRED ASSOCIATIONS through receiverships accompanied by payments of insurance of accounts.

M. In consideration of the mutual promises contained in this Agreement, the parties hereto enter into the following agreement.

AGREEMENT

Section 1. *Definitions.* For the purposes of this Agreement, the following terms have the indicated meanings:

(a) *"Acquired Association Claim"*: Any Claim that any MERGED ASSOCIATION or the ACQUIRING ASSOCIATION as its successor has against (1) any person who is or was, on or prior to the Effective Date, a director, officer, controlling person (including any person who directly or indirectly exercised a controlling influence over the management or policies of any MERGED ASSOCIATION or any subsidiary thereof), employee or agent of any MERGED ASSOCIATION or any subsidiary thereof, or an auditor, accountant, attorney, appraiser, broker, loan broker, deposit broker, securities dealer, investment banker, financial advisor or other professional, individual or entity that has performed services for any MERGED ASSOCIATION or any subsidiary thereof, or an employee, agent or other person acting for or in concert with any such person, *provided* that an action

or inaction of any such person on or prior to the Effective Date gave rise, in whole or in part, to such Claim; (2) an insurer who may be liable for indemnification of the loss caused, in whole or in part, by the action or inaction of any person identified in § 1(a)(1) above; (3) an officer, director, agent, administrator, executor, personal representative, heir or assign of any person identified in § 1(a)(1) above; or (4) any other person or persons, partnership, corporation, or legal entity, and any officer, director, partner, agent, administrator, executor, personal representative, heir or assign of any such third party, *provided* that the Claim against any such third party is related to a Claim against a party referred to in § 1(a)(1), (2) or (3) above. No Acquired Association Claim shall include any claim of the ACQUIRING ASSOCIATION against a party referred to above to collect on a loan made by any MERGED ASSOCIATION on which loan such party is an obligor.

(b) "*Affiliate*": Affiliate, as that term is defined in § 561.25 of the Insurance Regulations.

(c) "*Appraised Equity Capital*": Appraised equity capital as that term is defined in § 563.13(c) of the Insurance Regulations.

(d) "*Bank*": The Federal Home Loan Bank of Des Moines.

(e) "*Bank Board*": The Federal Home Loan Bank Board.

(f) "*Book Value*": When used in connection with a Related Claim or an Acquired Association Claim, and (except as set forth in § 1(f)(2) and (3) below) when used with respect to a Covered Asset, Book Value shall mean the value reflected on the books and records immediately prior to the Effective Date of the ACQUIRED ASSOCIATION that owned such Claim or Covered Asset immediately prior to the Effective

Date (excluding any special reserve or valuation allowance for such Covered Asset on the books of such ACQUIRED ASSOCIATION immediately prior to the Effective Date), as adjusted by the Initial Audit and as thereafter adjusted or determined in accordance with the accounting principles required by this Agreement.

(1) Except as set forth in § 1(f)(2) and (3) below, the following shall be included in the determination of Book Value:

(A) With respect to any property or interest herein which secures a Covered Asset and which is acquired by the ACQUIRING ASSOCIATION after the Effective Date by Foreclosure,

(i) The outstanding principal amount of the indebtedness secured by such property (excluding any specific loss reserve or valuation allowance relating to such indebtedness);

(ii) Any taxes or hazard insurance premiums due and payable or accrued as of the Effective Date that are subsequently paid by the ACQUIRING ASSOCIATION;

(iii) The costs, fees, and expenses of Foreclosure, *provided* that any costs, fees, and expenses incurred incident to the acceptance of a deed in lieu of foreclosure, or in connection with the repossession of property sold subject to a sales contract or loan which is in default, shall be included in Book Value only if the ACQUIRING ASSOCIATION complies with § 14(c) of this Agreement;

(iv) The amount, if approved in advance by the CORPORATION, paid for the satisfaction or settlement of a lien upon a Covered Asset or security for a Covered Asset, *provided* that such amount has not been reimbursed under another provision of this Agreement;

(v) Any unamortized premium paid or capitalized by the ACQUIRING ASSOCIATION; and

(vi) Any other costs, fees, and expenses associated with the acquisition of any property or interest therein that secures a Covered Asset, *provided* that such costs, fees, and expenses have not been reimbursed under another provision of this Agreement and have been approved in advance by the CORPORATION.

(B) Properly capitalized expenses or assessments, if approved in advance by the CORPORATION, for the repair, rehabilitation, or completion of property that is a Covered Asset, or security for a Covered Asset; *provided* that such expenses and assessments are within the limits permitted by § 13 of this Agreement, have not been reimbursed under another provision of this Agreement, and are determined in accordance with the accounting principles required by this Agreement;

(2) The following shall *not* be included in the determination of Book Value for Covered Assets:

(A) Any amount of specific reserves and valuation reserves of any ACQUIRED ASSOCIATION as of the Effective Date, as adjusted by the Initial Audit;

(B) Any amount of accrued and uncollected interest or late charges on the principal amount of the indebtedness related to a Covered Asset that has been accrued through the Effective Date;

(C) The undisbursed portion of any loan in process account, *provided,* however, that disbursements made after the Effective Date pursuant to a legally binding commitment of the ACQUIRED ASSOCIATION that owned such Covered Asset which exists immediately prior to the Effective Date, or pursuant to the prior written consent of the CORPORATION, shall be included in Book Value;

(D) The amount of any deferred income related to a Covered Asset, including, without limitation, unearned discounts on loans purchased, unearned profit on real estate sold, deferred loan fees or acquisition credits, unearned discounts on installment loans, deferred gains on securities, and other unearned discounts;

(E) With respect to any Covered Asset reflected on an ACQUIRED ASSOCIATION's books and records immediately prior to the Effective Date, any adjustment to the value of such Covered Asset made solely as a result of the accounting treatment of the Acquisition or the Mergers as a purchase of assets;

(F) The amount of any net operating income or loss determined in accordance with the accounting principles required by this Agreement and attributable to Covered Assets on the books and records of any ACQUIRED ASSOCIATION immediately prior to the Effective Date or acquired as a result of Foreclosure with respect to a Covered Asset; and

(G) The cost of appraisals required by the CORPORATION pursuant to this Agreement.

(3) Book Value, when used with respect to a Covered Asset that becomes such pursuant to § 1(h)(4) of this Agreement, shall mean the value of the Covered Asset on the books and records of the ACQUIRING ASSOCIATION as of the consummation of the transaction consented to pursuant to said § 1(h)(4), as such value may be adjusted in accordance with the accounting principles required by this Agreement.

(4) Notwithstanding the foregoing, unless the CORPORATION expressly permits the write-down of the Book Value of a Covered Asset and a charge to the Special Reserve Account pursuant to § 3(a)(1) and § 4 of this Agreement, Book Value shall not be

adjusted for any uninsured casualty loss or anticipated loss on any such Covered Asset, even though a specific reserve is or has been created for such anticipated loss or the asset's value is or has been written down pursuant to a regulatory requirement.

(g) *"Claim"*: Any claim, demand, or cause of action.

(h) *"Covered Asset"*: Except as provided in § 1(h)(5), the term "Covered Asset" means the following:

(1) Any loan which is on the books of any ACQUIRED ASSOCIATION immediately prior to the Effective Date that is contractually delinquent 90 days or more as of the Effective Date or that becomes contractually delinquent 90 days or more at any time within two years after the Effective Date; *provided* that, with respect to loans other than Participation Interests, Foreclosure is formally instituted within the later of 18 months from the Effective Date or 90 days after the date on which such loan has become a Covered Asset; and *provided further* that, if Foreclosure is delayed or barred by an order or ruling of any court of proper jurisdiction or by operation of law, then the applicable period within which Foreclosure must be formally instituted shall be extended until a reasonable time following the date on which Foreclosure is no longer delayed or barred.

(2) Real Estate Owned on the books of any ACQUIRED ASSOCIATION immediately prior to the Effective Date or acquired after the Effective Date as a result of a Foreclosure of any loan constituting a Covered Asset.

(3) Real Estate in Judgment and Real Estate Held for Investment on the books of any ACQUIRED ASSOCIATION immediately prior to the Effective Date.

(4) A loan, contract, or investment made by the ACQUIRING ASSOCIATION in connection with or to

facilitate the sale of, or to salvage, a Covered Asset, or any property or interest therein received in exchange for a Covered Asset, if, prior to the making of any such loan, contract, investment, or exchange of a Covered Asset the ACQUIRING ASSOCIATION has obtained the CORPORATION's written consent to the transaction and to the treatment as a Covered Asset of such loan, contract, investment, or property or interest received in exchange for a Covered Asset; *provided* that the CORPORATION's consent shall not be required if such Covered Asset is a Participation Interest and if, notwithstanding the ACQUIRING ASSOCIATION's best efforts to oppose such loan, contract, investment or exchange, the ACQUIRING ASSOCIATION (as a consequence of being the successor to a contractual or other legal obligation incurred by one of the ACQUIRED ASSOCIATIONS or as a consequence of entering into a contractual or other legal obligation which has been approved in writing by the CORPORATION) is contractually or otherwise legally obligated to make such loan, contract or investment or accept such exchange.

(5) Notwithstanding anything herein to the contrary, Covered Assets shall not include:

(A) Loans secured by valid and enforceable first liens or first mortgages on one to four family dwelling units;

(B) Loans secured by valid and enforceable first liens or first mortgages with an outstanding principal balance of $50,000 or less, *provided* that a participation loan is not excluded unless the total outstanding principal balance of the participation loan, not just the portion held by the ACQUIRING ASSOCIATION, is $50,000 or less;

(C) Any one to four family dwelling units;

(D) Any office buildings and facilities of any ACQUIRED ASSOCIATION, any real estate or

leasehold interest appurtenant thereto, any parking lots, any leasehold improvements, office furniture, fixtures and equipment, and any real estate held for development as an office site of any ACQUIRED ASSOCIATION; and

(E) Any property, real or personal, or interest therein, or any asset of any nature or kind that belongs to or is claimed to belong to a subsidiary of any ACQUIRED ASSOCIATION.

(i) *"Covered Asset Loss"*: The amount:

(1) by which the Book Value of a Covered Asset exceeds the Net Proceeds Received by the ACQUIRING ASSOCIATION upon the Liquidation of such Covered Asset; or

(2) of any write-down in Book Value of a Covered Asset approved by the CORPORATION pursuant to § 4(b) of this Agreement.

(j) *"Covered Asset Recovery"*: The amount by which the Net Proceeds Received by the ACQUIRING ASSOCIATION upon the Liquidation of any Covered Asset exceeds the Book Value of such Covered Asset or, if such Book Value had been written down with the CORPORATION's permission as provided in § 4(b) of this Agreement, the amount by which the Net Proceeds Received exceeds the Book Value as written down.

(k) *"Credit"* or *"Credit Item"*: An amount credited to the Special Reserve Account pursuant to the provisions of § 3(c) of this Agreement.

(l) *"Debit"* or *"Debit Item"*: An amount charged or debited to the Special Reserve Account pursuant to the provisions of § 3(a).

(m) *"Effective Date"*: The date and time at which the Acquisition and the Mergers have all become effective pursuant to the terms of the Acquisition Agreement, the Merger Agreements, Bank Board Resolutions and applicable law.

(n) *"Federal Regulations"*: The Rules and Regulations for the Federal Savings and Loan System, 12 C.F.R. § 541.1 *et seq.* (1987), as now or hereafter in effect.

(o) *"Federated Financial Loans"*: Loans that are insured by a governmental or private mortgage insurer and that are serviced by the CLOSED ASSOCIATION's wholly-owned subsidiary, Federated Financial Corporation ("Federated Financial"): (1) that are in the process of Foreclosure on the Effective Date, (2) that are contractually delinquent 90 days or more as of the Effective Date, or (3) with respect to which the first or second settlement check has not been provided by the appropriate mortgage insurer as of the Effective Date.

(p) *"Foreclosure"*: Unless specifically indicated otherwise by the context, includes, in addition to foreclosure, (1) the forfeiture of a contract of sale or a contract for deed, (2) a trustee's sale under a deed of trust, (3) the grant of a deed in lieu of foreclosure, (4) the acquisition of title to real estate pursuant to other comparable procedures allowed under applicable law, (5) the acquisition of title to any property securing a loan that is a Covered Asset pursuant to procedures for the enforcement of a security interest in such property under applicable law, or (6) the exercise of rights of possession to or control over personal property arising under contract or applicable law.

(q) *"GAAP"*: Generally accepted accounting principles, as applied in the savings and loan industry.

(r) *"Initial Audit"*: The audit to be performed pursuant to § 5(a) of this Agreement.

(s) *"Insurance Regulations"*: The Rules and Regulations for the Federal Savings and Loan Insurance Corporation, 12 C.F.R. § 561.1 *et seq.* (1987), as now or hereinafter in effect.

(t) *"Liquidation"*: As used in reference to a Covered Asset, Federated Financial Loan, Claim, Acquired Association Claim, or Related Claim:

(1) A sale of any asset or loan, at other than a Foreclosure sale at which the ACQUIRING ASSOCIATION is the purchaser, whether for cash or on other terms; *provided, however,* that the sale of any asset or loan between the ACQUIRING ASSOCIATION and the ACQUIRER, STATESMAN, AMERICAN LIFE or any other Affiliate of the ACQUIRING ASSOCIATION shall not constitute a Liquidation hereunder unless specifically approved in writing by the CORPORATION; or

(2) The release, compromise, satisfaction, settlement, reduction to judgment, or assignment to other than the CORPORATION of any Claim.

(u) *"Negative Regulatory Capital"*: The amount by which regulatory capital as defined in § 561.13 of the Insurance Regulations, as adjusted in this § 1(u), is less than zero. In determining such Negative Regulatory Capital for the purposes of this § 1(u):

(1) All general loss reserves, specific loss reserves or valuation allowances on Covered Assets (other than any such reserves or valuation allowances established for accrued and uncollected interest or for single family residential properties constituting REO) shall be credited to regulatory capital;

(2) Deferred losses on loans and investments which have been disposed of by an ACQUIRED ASSOCIATION prior to the Effective Date shall be debited to regulatory capital;

(3) Appraised Equity Capital, goodwill and other intangibles (of the type reported on line item A540 of the Quarterly Financial Report filed with the Bank Board) on the books and records of the ACQUIRED ASSOCIATIONS as of the Effective Date shall be debited to regulatory capital;

(4) The value of the CLOSED ASSOCIATION's investment in, including loans to, Federated Financial as of the Effective Date shall be adjusted to $15 million; and

(5) The value of single family residential properties constituting REO of any of the ACQUIRED ASSOCIATIONS shall be the fair market value of such properties as determined by the Initial Audit required by § 5(a) of this Agreement, provided that fair market value shall be calculated using a statistical sampling technique satisfactory to the ACQUIRING ASSOCIATION and the CORPORATION.

(v) *"Net Proceeds Received"*: As used in reference to the amount received by any of the parties hereto upon the Liquidation of a Claim, Related Claim, Covered Asset, Acquired Association Claim or Federated Financial Loan, the amount computed by deducting from the gross proceeds received (including any amounts received from a governmental or private mortgage insurer) all reasonable expenses in the form of payments to third parties actually incurred or paid by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE or the CORPORATION with respect to Claims assigned to the CORPORATION or Covered Assets or Federated Financial Loans purchased by the CORPORATION, *provided,* that such expenses have not been reimbursed otherwise. Such reasonable expenses may include, but not be limited to, attorneys' and accountants' fees, travel expenses, court costs and related expenses, litigation expenses, settlement charges, sales commissions and such other actual and reasonable costs that are directly related to the Liquidation of the Covered Asset, Federated Financial Loan or particular Claim.

(w) *"Note"*: A promissory note issued by the CORPORATION in substantially the form of Exhibit A attached hereto.

(x) *"Participation Interest"*: The interest of the ACQUIRING ASSOCIATION as successor to any ACQUIRED ASSOCIATION in any loan whereby the beneficial ownership of the indebtedness has been sold to more than one obligee including an ACQUIRED ASSOCIATION, but with respect to which the ACQUIRING ASSOCIATION does not act as lead lender or have the ability, through the exercise of voting power or otherwise, to in any way control the administration of the loan or the disposition of any assets securing the loan. Where, before or after the Effective Date, any such loan has gone into default and the lead lender has foreclosed upon or otherwise acquired title to the assets securing any such loan, the term "Participation Interest" shall include the ACQUIRING ASSOCIATION's interest in such assets.

(y) *"Quarter"*: Three consecutive calendar months, *provided* that the first Quarter during the term of this Agreement shall be deemed to be the period, if any, from the Effective Date to and including the last day preceding the first day of the first full calendar quarter following the Effective Date, and *provided* further, that the last quarter during the term of this Agreement shall be deemed to include the period, if any, from the first day after the last day of the last full calendar quarter during the term of this Agreement to the date on which this Agreement terminates.

(z) *"Real Estate Held for Investment"*: Real Estate held for sale, development or investment by any ACQUIRED ASSOCIATION.

(aa) *"Real Estate in Judgment"*: Real estate acquired by Foreclosure for which the applicable period of redemption has not expired.

(bb) *"Real Estate Owned" or "REO"*: Real estate or such other property acquired by Foreclosure, which following Foreclosure is not held for investment or for use in development as an office site of the ACQUIRING ASSOCIATION.

(cc) *"Regulatory Capital Maintenance Agreement"*: The agreement among the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN, AMERICAN LIFE and the CORPORATION of even date herewith, in the form or substantially in the form of Exhibit B attached hereto, pursuant to which the ACQUIRER and the ACQUIRING ASSOCIATION agree to maintain the regulatory capital of the ACQUIRING ASSOCIATION at a certain level, STATESMAN and AMERICAN LIFE provide a limited guarantee of such agreement and AMERICAN LIFE grants to the CORPORATION certain voting and disposition rights with respect to the common stock of the ACQUIRER held by AMERICAN LIFE.

(dd) *"Reimbursable"*: As used in describing a liability, loss, charge, expenses, Claim, Acquired Association Claim, or Related Claim of the ACQUIRING ASSOCIATION, "Reimbursable" shall mean a liability, loss or Claim as to which the ACQUIRING ASSOCIATION has or had a right to reimbursement under any bond, insurance policy or other source (other than this Agreement), including any such liability, loss or Claim as to which the ACQUIRING ASSOCIATION does not receive reimbursement due to its failure to pursue timely or vigorously such right in accordance with the management standard described in § 12 of this Agreement.

(ee) *"Related Claim"*: Any counterclaim, offset, insurance settlement, or other Claim which may result in a recovery by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN

LIFE and which is related to a Claim, liability, or loss under § 3 of this Agreement, and for which the CORPORATION is obligated to indemnify or pay the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE under this Agreement.

(ff) *"Special Reserve Account"*: The account established pursuant to § 3 of this Agreement.

(gg) *"Termination Date"*: The date five (5) years after the Effective Date.

Section 2. *Conditions.*

(a) The obligations of the parties under this Agreement are conditioned upon the satisfaction of all of the following conditions:

(1) Each Merger being duly authorized by the board of directors of the respective MERGED ASSOCIATION and effected in compliance with its charter and bylaws and applicable law;

(2) The execution and delivery of each Merger Agreement being duly authorized by the board of directors of the respective MERGED ASSOCIATION in contemplation of each Merger; and

(3) Receipt of certified copies of the corporate resolutions of the MERGED ASSOCIATIONS authorizing the Mergers and the execution and delivery of the Merger Agreements.

(b) The CORPORATION's obligations under this Agreement are also conditioned upon the satisfaction of all of the following conditions:

(1) The consummation of the Acquisition and the Mergers;

(2) The execution and delivery by the ACQUIRER, the ACQUIRING ASSOCIATION, STATESMAN and AMERICAN LIFE, as appropriate, of the Regulatory Capital Maintenance Agreement, a proxy in the form or substantially in the form

of the Irrevocable Proxy attached to such agreement, and a Misconduct Certification;

(3)(A) Receipt of an opinion from outside counsel for the ACQUIRING ASSOCIATION, in form and substance satisfactory to the CORPORATION and its counsel, to the effect that the purchase of substantially all of the assets and the assumption of substantially all of the liabilities of the CLOSED ASSOCIATION by the ACQUIRING ASSOCIATION, and the merger of each MERGED ASSOCIATION with and into the ACQUIRING ASSOCIATION, have been duly authorized by the directors of the ACQUIRING ASSOCIATION and effected in compliance with the ACQUIRING ASSOCIATION's charter and bylaws and applicable law and that the Acquisition Agreement, the Merger Agreements, the Regulatory Capital Maintenance Agreement and this Agreement have been duly authorized, executed and delivered by, and constitute valid and binding obligations of, the ACQUIRING ASSOCIATION, enforceable in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and except that the remedy of specific performance and injunctive and other forms of equitable relief are subject to certain equitable defenses and to the discretion of the court before which any proceedings may be brought;

(B) Receipt of a certified copy of the corporate resolutions of the ACQUIRING ASSOCIATION authorizing execution and delivery on its behalf of the Acquisition Agreement, the Merger Agreements, the Regulatory Capital Maintenance Agreement and this Agreement;

(4)(A) Receipt of an opinion from outside counsel for the ACQUIRER, STATESMAN and AMERICAN

LIFE, in form and substance satisfactory to the CORPORATION and its counsel, to the effect that the purchase of all of the stock of the ACQUIRING ASSOCIATION by the ACQUIRER has been duly authorized by the directors of the ACQUIRER and effected in compliance with the ACQUIRER's charter and bylaws and applicable law and that this Agreement, the Regulatory Capital Maintenance Agreement (including the form of Irrevocable Proxy attached thereto), the Preferred Stock identified in § 6(d) and the Subordinated Debenture identified in § 6(e) have been duly authorized, executed, and delivered by, and constitute valid and binding oblitigations of, the ACQUIRER, STATESMAN and AMERICAN LIFE, as appropriate, enforceable in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the rights of creditors generally, and except that the remedy of specific performance and injunctive and other forms of equitable relief are subject to certain equitable defenses and to the discretion of the court before which any proceedings may be brought;

(B) Receipt of certified copies of the corporate resolutions of the ACQUIRER, STATESMAN and AMERICAN LIFE authorizing execution and delivery on their behalf of this Agreement, the Regulatory Capital Maintenance Agreement and the Irrevocable Proxy, the Preferred Stock and the Subordinated Debenture, as appropriate;

(5) Receipt of a copy of the stock certificate issued by the ACQUIRING ASSOCIATION to the ACQUIRER, which certificate shall include a statement to the effect that the shares represented thereby are restricted as to transfer as provided in the Regulatory Capital Maintenance Agreement;

(6) All corporate and other proceedings taken in connection with the Acquisition and the Mergers, and all documents incident thereto, shall be satisfactory in form and substance to the CORPORATION and its counsel, and the CORPORATION and its counsel shall have received all such counterpart originals or certified or other copies of such documents as either may reasonably request; and

(7) The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN, AMERICAN LIFE and any of their respective Affiliates and subsidiaries, within the time periods specified by the terms of this Agreement or by the Bank Board, (1) shall have executed and delivered to the CORPORATION all other agreements, instruments, and documents required to be executed and delivered by the terms of this Agreement and by any action of the Bank Board in approving the Acquisition, the Mergers and related transactions and (2) shall have taken all other actions imposed, in any action by the Bank Board approving the Acquisition, the Mergers or related transactions, as conditions to the CORPORATION's obligation to provide assistance hereunder.

(c) The obligations of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE under this Agreement are also conditioned upon the satisfaction of all of the following conditions:

(1) The consummation of the Acquisition, the Mergers and the other transactions contemplated by this Agreement; and

(2) Receipt of certified copies of the resolutions of the Bank Board authorizing execution and delivery on behalf of the CORPORATION or the Receiver of the Acquisition Agreement, the Regulatory Capital Maintenance Agreement and this Agreement.

Section 3. *Special Reserve Account.* The ACQUIRING ASSOCIATION for itself and the ACQUIRER,

STATESMAN and AMERICAN LIFE shall establish as of the Effective Date a single memorandum account, with an opening balance of zero, to be called the Special Reserve Account, and shall maintain such account solely for the purpose of, and in accordance with, the provisions of this Agreement, without limitation of its duty to maintain its books and records in accordance with proper accounting procedures and the Insurance Regulations.

(a) *Debits.* The ACQUIRING ASSOCIATION, for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, following the Effective Date, may charge as Debits to the Special Reserve Account amounts equal to each of the following items:

(1) *Covered Asset Losses.* Ninety-three percent (93%) of each Covered Asset Loss;

(2) *Appraisal Costs.* The cost of any independent appraisal required by the CORPORATION pursuant to this Agreement and paid for by the ACQUIRING ASSOCIATION; *provided,* that the appraiser selected by the ACQUIRING ASSOCIATION and the cost of appraisal have been approved in advance by the CORPORATION, and *provided further* that the ACQUIRING ASSOCIATION shall instruct the appraiser to deem both the ACQUIRING ASSOCIATION and the CORPORATION as its client and to conduct the appraisal in accordance with standards approved by the Bank Board;

(3) *Indemnification.* The amounts owed by the CORPORATION under § 7 of this Agreement pursuant to its obligations to indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE;

(4) *Claim Expenses.* The amount of the reasonable costs and expenses incurred by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and

AMERICAN LIFE, where appropriate, in pursuit of a Related Claim or Acquired Association Claim, and reimbursable by the CORPORATION pursuant to § 7 or § 8 of this Agreement;

(5) *Covered Asset Purchase.* The amount of the purchase price of a Covered Asset purchased by the CORPORATION in accordance with §§ 13 or 15 of this Agreement;

(6) *Payment of Credits.* The amount of any payments made by the ACQUIRING ASSOCIATION, for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, to eliminate a Credit balance in the Special Reserve Account;

(7) *Expenses to Cure.* The amount of other payments or costs incurred with the CORPORATION's prior written approval in order to cure or salvage any Covered Asset or security for a Covered Asset or prevent a substantial deterioration in value of a Covered Asset, *provided* that such payments or costs are not appropriately capitalized under the accounting principles required by this Agreement;

(8) *Assignment of Related Claim and Acquired Association Claim and Excess Recoveries.* The Book Value reflected on the books and records of an ACQUIRED ASSOCIATION immediately prior to the Effective Date of a Related Claim or Acquired Association Claim assigned to the CORPORATION pursuant to § 8(b) of this Agreement and any excess recovery on any such claim to be debited to the Special Reserve Account pursuant to § 8(e) of this Agreement.

(9) *Uncollected Interest.* The amount of the ACQUIRED ASSOCIATION's uncollected interest on any Covered Asset accrued prior to the Effective Date that remains uncollected subsequent to the Effective Date, at such time as such accrued and uncollected

interest is determined by the ACQUIRING ASSOCIATION, with the written concurrence of the CORPORATION, to be uncollectible and is written off, *provided*, that this amount shall not include any amounts paid by the CORPORATION to the ACQUIRING ASSOCIATION pursuant to § 6(a)(1) and (2) of this Agreement, including any amounts with respect to which general loss reserves, specific loss reserves or valuation allowances were established prior to the Effective Date; and *provided further*, that the amounts of such interest that are subsequently collected shall be credited to the Special Reserve Account upon collection.

(10) *Yield Subsidy.*

(A) For any given Quarter during the first five years of this Agreement, with respect to all Covered Assets which have not been liquidated at the beginning of such Quarter, the excess, if any, of (i) the Guaranteed Yield Amount, as computed below over (ii) the actual yield, whether positive or negative, during such Quarter on such Covered Assets, which shall include all interest and other income received or accrued which as attributable to such Covered Assets, including, specifically, with respect to Real Estate Owned, Real Estate Held for Investment, and Real Estate in Judgment, any net operating income or net operating loss; *provided*, that for any Quarter during the term of this Agreement in which the actual yield exceeds the Guaranteed Yield provided for hereunder, there shall be a Credit to the Special Reserve Account for the amount of such excess.

Net operating income or operating loss on Real Estate Owned, Real Estate Held for Investment and Real Estate in Judgment shall be determined by deducting all expenses directly attributable to such real estate (including all items appropriately expensed

under GAAP, but specifically excluding depreciation and the ACQUIRING ASSOCIATION's administrative and overhead expenses), from the gross income attributable to such real estate.

(B) The Guaranteed Yield Amount for any Quarter constituting a full calendar quarter shall be computed by multiplying the Average Book Value of such Covered Assets for such quarter (determined for a given Quarter by adding the Book Value of all unsold Covered Assets on the first day of the Quarter and the Book Value of all unsold Covered Assets on the last day of each calendar month within the Quarter and dividing the sum by four) by the Guaranteed Yield Percentage. The Guaranteed Yield Percentage for all Covered Assets other than Participation Interests shall be equal to one-quarter of a rate that is equal to the cost of funds for savings and loan institutions operating in the Bank Board's Eighth District, as most recently reported at the end of a Quarter by the Bank ("Eighth District COF"), plus 225 basis points until the second anniversary of the Effective Date, shall then decline by 50 basis points and shall decline further by an additional 25 basis points on the third anniversary of the Effective Date and on each anniversary thereafter until the termination of the CORPORATION's obligations under this Agreement. The Guaranteed Yield Percentage for Participation Interests shall remain fixed at one-quarter of Eighth District COF plus 225 basis points.

(C) If the first or last Quarter during the term of this Agreement does not constitute a full Quarter, the Guaranteed Yield Amount for such Quarter shall be the product of

(i) the Average Book Value of such Covered Assets for such Quarter or portion thereof (determined by adding the Book Value of all unsold Covered Assets

on the first day of the Quarter and the last day of each calendar month ending within the Quarter or portion thereof and dividing the sum by the number of such first and last days) multiplied by a fraction (the numerator of which shall be the number of days during which this Agreement was in effect in such Quarter and the denominator of which shall be 90), and

(ii) the Guaranteed Yield Percentage.

(D) In the event of reinstatement of a loan to income-producing status and collection of delinquent interest so that such loan ceases to be a Covered Asset, the Guaranteed Yield Amount for any previous Quarter that included such loan in the determination of Average Book Value for all or any portion of such quarter shall be recalculated excluding such loan, and the sum of the differences between the Guaranteed Yield Amount as recalculated and as originally calculated for each such Quarter shall be a Credit to the Special Reserve Account. The calculation of the Credit to be made to the Special Reserve Account, if any, pursuant to this § 3(a)(10)(D) shall be made at the end of each Quarter for all loans which cease to be Covered Assets during such Quarter.

(E) With respect to loans that become contractually delinquent 90 days or more after the Effective Date, such loans shall be deemed to be Covered Assets, for purposes of this § 3(a)(10), from the time they first become contractually delinquent. At the end of each Quarter during which a loan becomes contractually delinquent 90 days or more, the Guaranteed Yield Amount for the previous Quarter (if such loan became contractually delinquent in such prior Quarter) shall be recalculated including such loan as of the day it first became contractually delinquent, and the difference between the Guaranteed Yield Amount as recalculated and as originally calculated for such

prior Quarter shall be added to the Guaranteed Yield Amount calculated for such current Quarter.

(F) For any Quarter that has more than one Guaranteed Yield Percentage applicable to portions of such Quarter, the Guaranteed Yield Percentage to be applicable to the entire Quarter shall be determined by multiplying each Guaranteed Yield Percentage by the number of days in such Quarter to which such Guaranteed Yield Percentage applies, adding the results of such multiplications. and dividing such sum by the total number of days in the Quarter.

(11) *Recoveries on Purchased Covered Assets.* Any amount permitted to be debited to the Special Reserve Account pursuant to § 15(d).

(12) *Federated Financial Loan Losses.* Eighty-five percent (85%) of the amount by which the value reflected by the books and records of Federated Financial of a Federated Financial Loan exceeds the Net Proceeds received by the ACQUIRING ASSOCIATION upon the Liquidation of such loan subject to the limitation of § 7(f)(2) of the Agreement; *provided* that the ACQUIRING ASSOCIATION: (A) provides to the CORPORATION the same rights and the same reports and other documentation, follows the same procedures and obtains from the CORPORATION the same consents, if any, it would have had to provide to, follow with respect to or obtain from the appropriate governmental or private mortgage insurer to recover losses on such loan, or (B) provides such other rights, reports and documentation, follows such other procedures and obtains such other consents as shall be mutually agreed upon by the CORPORATION and the ACQUIRING ASSOCIATION. For purposes of this paragraph the value of each such loan shall be the unpaid principal balance, unfunded escrow advances, interest advances and other advances, including but

not limited to, reasonable attorney fees, inspection fees, appraisals and insurer required repair costs.

(13) *Lease Losses.* Beginning on the dates the ACQUIRING ASSOCIATION ceases to occupy the respective leased premises, fifty percent (50%) of the expenses and losses incurred by the ACQUIRING ASSOCIATION up to the date of and upon the disposition or termination of the lease held by the CLOSED ASSOCIATION immediately prior to the Effective Date for the building located at 11300 US Highway 1, Suite 300, North Palm Beach, Florida, and the lease held by Federated Financial immediately prior to the Effective Date for the building located at 6560 Powers Ferry Road, Atlanta, Georgia; *provided* that such disposition or termination shall have been approved in writing by the CORPORATION, which approval shall not be unreasonably withheld.

(14) *Tax Benefit Adjustment Payments.* Any amount permitted to be debited to the Special Reserve Account pursuant to § 3(c)(13)(F); and

(b) *Exclusions from Debits.* The ACQUIRING ASSOCIATION, for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, may not debit the Special Reserve Account and shall not seek reimbursement from the CORPORATION for:

(1) Any of the expenses or costs of STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION incident to the Acquisition or the Mergers not specifically reimbursable under this Agreement;

(2) Any increase in the operating expenses of STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION as a result of the Acquisition or the Mergers or the administration and management of the assets and liabilities of the ACQUIRED ASSOCIATIONS not specifically reimbursable under this Agreement;

(3) Any loss, charge, or expense actually caused by the ACQUIRING ASSOCIATION's failure to comply with the management standard set forth in § 12(a) of this Agreement in its administration of the assets and liabilities of the ACQUIRED ASSOCIATIONS after the Effective Date.

(4) That portion of any loss, charge, or expense actually recovered by STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION or Reimbursable under any insurance policy or bond or other provision for funding (other than under this Agreement), including from any governmental or private mortgage insurer;

(5) Except to the extent specifically reimbursed under other sections of this Agreement, any expenses of STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION incurred in the administration of this Agreement, including, but not limited to, compensation paid to employees or agents of STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION for services performed in connection with the preparation of reports and supporting documentation required to be filed with the CORPORATION under this Agreement; and

(6) The write down of the Book Value of any Covered Asset, if the CORPORATION has denied the ACQUIRING ASSOCIATION's application pursuant to § 4 to write down such asset, of if the CORPORATION has approved the application with modifications or conditions that the ACQUIRING ASSOCIATION has not met.

(c) *Credits to Special Reserve Account.* The ACQUIRING ASSOCIATION, for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, shall promptly credit to the Special Reserve Account

an amount equal to each of the following items to the extent that such item was not shown as an asset on the books and records of the ACQUIRED ASSOCIATION immediately prior to the Effective Date, was adjusted by the Initial Audit:

(1) *Covered Asset Recoveries.* With respect to any Covered Asset, ninety-three percent (93%) of any Covered Asset Recovery on such Covered Asset;

(2) *Refunds.* The amount of any refund (excluding the tax refunds made pursuant to § 3(c)(6)) received by the ACQUIRING ASSOCIATION with respect to payments or expenditures made by any ACQUIRED ASSOCIATION prior to the Effective Date;

(3) *Pre-Effective Date Interest.* The amount of any interest not accrued by, or for which any reserves or valuation allowances were established by, an ACQUIRED ASSOCIATION prior to the Effective Date but collected by the ACQUIRING ASSOCIATION subsequent to the Effective Date;

(4) *Other Recoveries on Covered Assets.* Ninety-three percent (93%) of the amount of any other net recovery or any benefit realized by the ACQUIRING ASSOCIATION in satisfaction of or recovery on any Covered Asset in excess of Book Value or, if such Covered Asset has been written down pursuant to § 4 of this Agreement, in excess of Book Value as so written down, including but not limited to, any recoveries on any Claim or judgment related to or in connection with such Covered Asset;

(5) *Offset Gains.* Any amount the ACQUIRING ASSOCIATION recovers from other than the CORPORATION, whether by counterclaim, offset, insurance settlement, or otherwise, with respect to any liability or Claim as to which the ACQUIRING ASSOCIATION, acting for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, debited the Special Reserve Account;

(6) *Tax Refunds.* The amount of the net tax refund received after the Effective Date, if any, from whatever governmental source derived, of taxes paid relating to a taxable year of an ACQUIRED ASSOCIATION which ends on or prior to the Effective Date, including, but not limited to, a refund of state or local taxes, plus any interest received by the ACQUIRING ASSOCIATION on such refund to the extent any such refund has not been accrued prior to the Effective Date as determined pursuant to the Initial Audit. The net tax refund shall be equal to the total refunds received in a particular year, plus interest received on such refunds, less the Federal, state, or local tax liability payable with respect to such refunds and interest and less any administrative expenses incurred by the ACQUIRING ASSOCIATION in obtaining such refunds. The Federal, state and local tax liability associated with such refunds and interest shall be the difference between the actual tax liability payable by reason of the inclusion of such refunds and interest in gross income and the tax liability which would have been payable if such refunds and interest had not been includible in gross income;

(7) *Audit Expense.* Fifty percent (50%) of the cost of preparing the Limited Audit and the inventory required by § [illegible] of this Agreement, *provided* that the Initial Audit and the inventory are completed within 120 days of the date hereof.

(8) *Excess Yield.* (A) With respect to the Covered Assets for which the CORPORATION provided a yield subsidy pursuant to § (3)(a)(10) for any given Quarter, the amount of any excess of actual yield for such Quarter over the Guaranteed Yield Amount for such Quarter and (B) any amount due pursuant to § 3(a)(10)(D).

(9) *Uncollected Interest.* The amount of uncollected interest written off in accordance with

§ 3(a)(9), but subsequently collected by the ACQUIRING ASSOCIATION;

(10) *Recoveries on Acquired Association Claims and Related Claims.* Any amount received or benefit realized by the ACQUIRING ASSOCIATION or, where appropriate, the ACQUIRER, STATESMAN or AMERICAN LIFE, upon Liquidation of any Acquired Association Claim or Related Claim as provided in § 7(d) and § 8(c) of this Agreement to the extent such recoveries do not exceed contributions by the CORPORATION under this Agreement.

(11) *CORPORATION's Contribution.* Contributions made by the CORPORATION to eliminate a Debit balance in the Special Reserve Account.

(12) *Federated Financial Loan Recoveries.* Eighty-five percent (85%) of (i) any amount by which the Net Proceeds Received by the ACQUIRING ASSOCIATION upon the Liquidation of a Federated Financial Loan exceeds the value of such loan reflected by the books and records of Federated Financial immediately prior to the Effective Date, as adjusted to the extent allowable under the applicable rules and procedures of the appropriate governmental or private mortgage insurer of such loan, and of (ii) any Net Proceed Received on a deficiency judgment or other Claim related to a Federated Financial Loan.

(13) *Tax Benefits.*

(A) The amount of the net tax benefits, if any, realized by any consolidated group of which the ACQUIRER or the ACQUIRING ASSOCIATION is a member ("Taxable Party"), in any year ("Net Tax Benefits") calculated as provided in this § 3(c)(13). For purposes of this Agreement, the Net Tax Benefits shall be the tax benefits that are attributable to the items described below ("Tax Benefit Items") that are utilized by the Taxable Party to reduce its tax liability

in a given tax year as calculated in paragraph (B) below: Any federal, state or local income tax deductions or losses actually taken by the Taxable Party with respect to net operating losses of any of the ACQUIRED ASSOCIATIONS through the Effective Date. Such net operating losses shall be deemed to be actually taken when used by the Taxable Party to reduce its tax liabilities that were incurred during the taxable year of the ACQUIRED ASSOCIATIONS ending on the Effective Date.

(B) The Net Tax Benefits for a taxable year shall be equal to:

(i) fifty (50%) percent of the excess, of any, of

(AA) the federal, state and local income tax liability for such taxable year (taking into account all allowable carryovers and carrybacks to such taxable year) which would have been imposed on the Taxable Party if the deductions or losses described in § 3(c)(13)(A) had not been deducted in any taxable year over

(BB) the federal, state and local income tax liability for such taxable year (taking into account all allowable carryovers and carrybacks to such taxable year) actually imposed on the Taxable Party;

(C) The Net Tax Benefits shall be credited to the Special Reserve Account or paid in cash, pursuant to § 3(c)(11)(G) of this Agreement, at the time of filing of the federal income tax return of the Taxable Party for the taxable year in which said Net Tax Benefits are realized (including by any of carryovers and carrybacks);

(D) In the event Net Tax Benefits are credited or paid with respect to Tax Benefit Items that are subsequently disallowed or that cease to be Tax Benefit Items because it is determined that payments with respect to deductions and losses otherwise

described in § 3(c)(13)(A) were not excludable from gross income, such Net Tax Benefits shall be debited to the Special Reserve Account or shall be paid by the CORPORATION or the ACQUIRING ASSOCIATION as set forth in § 3(c)(13)(F);

(E) Each of the ACQUIRER and the ACQUIRING ASSOCIATION shall, upon request of the CORPORATION, provide copies of the tax returns and amended tax returns of itself and of the consolidated group, if any, of which it is a member, for any taxable year(s) that are specified by the CORPORATION and relevant to the determination of the Credit to the Special Reserve Account or payments required to be made to the CORPORATION pursuant to this section;

(F) Repayments or payments by the CORPORATION required by this § 3(c)(13) shall be effected by a Debit to the Special Reserve Account, if made prior to the Termination Date, and by a cash payment or wire transfer within ten days after the CORPORATION's receipt of written demand for payment, if made after the Termination Date; *provided*, that in either case the CORPORATION shall receive a full written explanation of the basis for its payment obligation; and *provided further*, that the ACQUIRER or the ACQUIRING ASSOCIATION or each of them, as the case may be, has compiled with § 12(f) with respect to the Tax Benefit items or Net Tax Benefits that are subject to adjustment;

(G) The provisions of this § 3(c)(11) shall survive the Termination Date. After the Termination Date, each of the ACQUIRER and the ACQUIRING ASSOCIATION shall pay to the CORPORATION by cash payment or wire transfer amounts equal to all the Net Tax Benefits that prior to the Termination Date would have been credited to the Special Reserve Account.

(14) *Income Payment Credits.* Any amount permitted [illegible] be credited to the Special Reserve Account pursuant to § 6(d).

Section 4. *Write-Down of a Covered Asset.*

(a) Approval of Write-Down. The ACQUIRING ASSOCIATION shall not write down any Covered Asset without first obtaining the CORPORATION's written consent pursuant to the terms of this § 4, and shall undertake to liquidate each Covered Asset in accordance with the terms of this Agreement prior to applying to the CORPORATION for such consent. In the event that the ACQUIRING ASSOCIATION proposes to write down a Covered Asset, the ACQUIRING ASSOCIATION shall first apply to the CORPORATION for permission to write down a Covered Asset by submitting to the CORPORATION in writing the terms, including the amount, of the proposed write-down, and the grounds for the ACQUIRING ASSOCIATION's opinion that the Covered Asset should be written down, supported by such information or documents as the CORPORATION may reasonably request.

(b) *Determination of Write-Down.* With respect to any Covered Asset, any write-down shall be determined as follows:

(1) The CORPORATION may require the ACQUIRING ASSOCIATION to write down the Book Value of any Covered Asset; and such amount of the resulting Covered Asset Loss shall be debited to the Special Reserve Account as provided in § 3(a)(1); or

(2) Within thirty (30) days of the CORPORATION's receipt for an application from the ACQUIRING ASSOCIATION setting with the grounds for the ACQUIRING ASSOCIATION's opinion that the value of a Covered Asset is less than its Book Value, and such information or documents as the CORPORATION may request, the CORPORATION shall:

(A) approve the application, with or without modifications or conditions, and permit the ACQUIRING ASSOCIATION to write down the Covered Asset's Book Value and Debit such amount of the resulting Covered Asset Loss to the Special Reserve Account as provided in § 3(a)(1);

(B) deny the application (the basis for such denial shall not be unreasonable), in which case the CORPORATION shall direct the ACQUIRING ASSOCIATION to take such action with respect to the Covered Asset as, in the exercise of reasonable judgment, the CORPORATION deems necessary or appropriate; or

(C) require the ACQUIRING ASSOCIATION to submit additional information, including, but not limited to, an independent appraisal. Within thirty (30) days after the CORPORATION's receipt of any additional information requested, the CORPORATION shall approve, with or without modifications or conditions, or deny such application, in which case the CORPORATION shall direct action by the ACQUIRING ASSOCIATION as provided by paragraph (B) above.

(c) *Required Sale.* The CORPORATION may at any time require the ACQUIRING ASSOCIATION to sell any Covered Asset to any person or entity the CORPORATION designates, including the CORPORATION, at a price specified pursuant to § 13 of this Agreement, *provided*, that the CORPORATION can not require the ACQUIRING ASSOCIATION to provide financing to such person or entity.

(d) *Adjustment at Termination.* As of the Termination Date of this Agreement, the ACQUIRING ASSOCIATION shall adjust, if necessary, the Book Value of each Covered Asset remaining on its books to the value of such asset as determined by agreement

between the ACQUIRING ASSOCIATION and the CORPORATION or by an appraisal acceptable to both the ACQUIRING ASSOCIATION and the CORPORATION. Such agreement may be made or such appraisals may be obtained at any time beginning on the date which is four years and six months from the Effective Date. The amount of any adjustment of the Book Value of any Covered Asset pursuant to this § 4(d) shall be deemed, for purposes of this Agreement, a Covered Asset Loss or a Covered Asset Recovery, respectfully, prior to the Termination Date. An appraisal pursuant to this § 4(d) shall be performed by an appraiser selected by the ACQUIRING ASSOCIATION and acceptable to the CORPORATION. In the event either party objects to an appraisal prepared by such an appraiser, such party shall submit its objections in writing to the other party. Such objections shall be specific and shall be based upon the Bank Board's appraisal policies then in effect. Following any such objections, the parties can request the appraiser to revise his appraisal in light of such objections or can select a new appraiser in the same manner as the initial appraiser was selected; *provided* that any new appraisal requested by the Acquiring Association shall be performed at the ACQUIRING ASSOCIATION's expense. Any revised or new appraisal shall be subject to approval by both parties on the same basis.

Section 5. *Initial Audit and Inventory.* As soon as is practicable after the Effective Date, the CORPORATION with the assistance of the ACQUIRING ASSOCIATION's personnel, whose salaries and expenses shall be paid by the ACQUIRING ASSOCIATION without reimbursement from the CORPORATION, shall cause to be prepared and completed by Coopers & Lybrand.

(a) an Initial Audit of each ACQUIRED ASSOCIATION as of immediately prior to the Effective Date, to be performed in accordance with generally accepted auditing standards, except that the scope of the Initial Audit shall be determined by the CORPORATION consistent with this Agreement and shall not include a revaluation of any ACQUIRED ASSOCIATION's assets, other than single family residential properties constituting REO (selected on a sampling basis), or a determination whether accrued but uncollected interest, if any, is collectible; and

(b) an inventory of all assets and liabilities required by the ACQUIRING ASSOCIATION as of the Effective Date under the Acquisition Agreement and the Merger Agreements. Such inventory shall be limited to such assets and liabilities as are shown on the books and records of the ACQUIRED ASSOCIATIONS immediately prior to the Effective Date, or which are reasonably ascertainable during the preparation of the inventory. A copy of the Initial Audit and the inventory, in such forms as the CORPORATION shall determine, shall be furnished to the ACQUIRING ASSOCIATION upon completion and approval by the CORPORATION.

Section 6. *Payments and Contributions.*

(a) *Initial Contributions by the CORPORATION.*

(1) *Cash Contribution.* If the conditions set forth in § 2 of this Agreement have been satisfied, within five business days after the Effective Date, the CORPORATION shall wire transfer to the account of the ACQUIRING ASSOCIATION at the Bank immediately available funds in an amount equal to $60 million or approximately fifty-eight percent (58%) of the estimated combined Negative Regulatory Capital of all of the ACQUIRED ASSOCIATIONS immediately prior to the Effective Date, which the parties

agree equals $103 million ("Estimated Negative Regulatory Capital").

For the purposes of reports to the Bank Board, other than reports or financial statements prepared for reporting or disclosure purposes that are required to be governed by GAAP, $26 million of the contribution made under this § 6(a)(1) shall be credited to the ACQUIRING ASSOCIATION's regulatory capital account and shall constitute regulatory capital (as defined in § 561.13 of the Insurance Regulations). The parties understand that the preceding sentence is not intended to address in any way the accounting treatment of contributions from the CORPORATION that must be reflected in any filing that the ACQUIRING ASSOCIATIONS may make, whether to the Bank Board (for reporting or disclosure purposes) or otherwise, that requires the submission of financial statements prepared in accordance with GAAP.

(2) *Promissory Note.* If the conditions set forth in § 2 of this Agreement have been satisfied, on the Effective Date the CORPORATION shall deliver to the ACQUIRING ASSOCIATION the Note, duly executed by the CORPORATION, the principal amount which shall be equal to the difference between the Estimated Negative Regulatory Capital and the amount of cash contributed to the ACQUIRING ASSOCIATION within five business days after the Effective Date pursuant to § 6(a)(1) above. Promptly

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after the CORPORATION's receipt and approval of the Initial Audit referred to in § 5(a):

(i) the Corporation shall increase, as of the Effective Date, the principal balance of the Note by the amount, if any, by which the combined Negative Regulatory Capital of all of the ACQUIRED ASSOCIATIONS immediately prior to the Effective Date, as reflected by the Initial Audit, exceeds the amount of Estimated Negative Regulatory Capital and shall pay, at the next Interest Payment Date (as defined in the Note), following such increase, all interest on the amount of such increase accrued from the Effective Data through the Interest Payment Period (as defined in the Note) immediately preceding such Interest Payment Date; or

(ii) the Corporation shall decrease, as of the Effective Date, the principal balance of the Note by the amount, if any, by which the amount of Estimated Negative Regulatory Capital exceeds the combined Negative Regulatory Capital of all of the ACQUIRED ASSOCIATION immediately prior to the Effective Date, as reflected by the Initial Audit, and the amount of accrued interest on the Note due and payable on the next Interest Payment Date following such decrease shall be reduced by the amount of interest on the amount of such increase which has been accrued or paid through the Interest Payment Period immediately preceding such Interest Payment Date.

(b) *Debit Balance.* Within thirty (30) days after receipt of each Quarterly Report required pursuant to § 11(a) of this Agreement or within ninety (90) days of the final accounting required pursuant to § 11(c) of this Agreement, the CORPORATION will contribute to the ACQUIRING ASSOCIATION, by deposit into the ACQUIRING ASSOCIATION's account at the Bank, an amount equal to the Debit balance of the Special

Reserve Account that is not offset by Credits due to the CORPORATION calculated as of the last day of the applicable Quarter or as of the Termination Date. After the Termination Date, amounts payable to the ACQUIRING ASSOCIATION by the CORPORATION pursuant to §§ 7 and 8 of this Agreement shall be paid in a like manner.

(c) *Contributions Resulting from Assignment of Claims.* The amount of any payment made by the CORPORATION in excess of the fair market value of any Acquired Association Claim or Related Claim assigned to the CORPORATION pursuant to § 8, shall be deemed to be a contribution by the CORPORATION. Fair market value may be determined, at the election of the CORPORATION, by Agreement of the CORPORATION and the ACQUIRING ASSOCIATION, or by an appraisal by an independent appraiser by the CORPORATION and the Acquiring Association, the cost of which appraisal shall be paid by the CORPORATION.

(d) *Income Payments.*

(1) The ACQUIRING ASSOCIATION shall pay to the FSLIC 9% of its Gross Book Income for the first two fiscal years following the Effective Date and 18% of its Gross Book Income for the fiscal years and any portion thereof from and including the third fiscal year through the 10th anniversary of the Effective Date. Any payments due hereunder shall be credited to the Special Reserve Account if the Gross Book Income is determined prior to the termination of this Agreement and shall be paid in immediately available funds if the Gross Book Income is determined after the termination of this Agreement.

(2) Notwithstanding the foregoing, in the event the ACQUIRING ASSOCIATION's Gross Book Income for any year equals to exceeds $5 million, then

the ACQUIRING ASSOCIATION shall assign and transfer to the FSLIC 20,000 shares of Statesman Preferred Stock having an initial book value of $2.0 million for such a year, and the transfer of Preferred Stock in each such year shall be in lieu of payments which would otherwise be paid under § 6(d)(1) for each such year.

(3) In the event, pursuant to § 6(d)(2), the FSLIC receives in the aggregate 100,000 shares of Statesman Preferred Stock having a book value of $10 million, the ACQUIRING ASSOCIATION shall have no further obligations to make any credits, payments or transfers pursuant to this § 6(d).

(4) Credits, payments or transfers pursuant to this § 6(d) shall be made as soon after the end of the applicable fiscal year or, in the case of the portion of a fiscal year ending on the tenth anniversary of the Effective Date, as soon after the end of such portion, as the Gross Book Income for such fiscal year or portion thereof, but in no event later than 90 days after the end of such fiscal year or portion thereof.

(5) For purposes of this § 6(d), the term Gross Tax Income shall mean net income in accordance with GAAP but without any deduction for any payments made on the subordinated debenture issued to the CORPORATION pursuant to § 6(e). For purposes of this § 6(d) "Statesman Preferred Stock" shall mean 1988 Series I Convertible Preferred Stock of STATESMAN bearing a dividend rate of 8%.

(e) *Issuance of Subordinated Debenture.* On the Effective Date, the ACQUIRING ASSOCIATION shall issue and deliver to the CORPORATION a subordinated debenture, in the form or substantially in the form of Exhibit B attached hereto, with a face amount of $5.0 million and a term of ten years.

(f) *Reimbursement of Credit Balances.*

(1) Within thirty (30) days after the CORPORATION's receipt of each Quarterly Report required pursuant to § 6(a) of this Agreement, the ACQUIRING ASSOCIATION shall, for itself and the ACQUIRER, remit to the CORPORATION an amount equal to the aggregate amount of the net Credit Balance of the Special Reserve Account as of the last day of the Quarter reported in the Quarterly Report; *provided*, that if such amount exceeds the total of the contributions made by the Corporation to date and not repaid, then the ACQUIRING ASSOCIATION shall remit to the Corporation only so much of such amount as equals the total of the contributions, and the excess, if any, shall remain as a credit balance in the Special Reserve Account.

(2) Within ninety (90) days after rendering its final accounting required under § 11(c) of this Agreement, the ACQUIRING ASSOCIATION shall, for itself and the ACQUIRER, STATESMAN and AMERICAN LIFE, remit to the CORPORATION an amount equal to the aggregate net Credit balance in the Special Reserve Account as of the Termination Date; *provided*, that the amount so remitted shall not exceed the total contributions made by the CORPORATION under this Agreement and not repaid.

(g) *Optional Purchase of Covered Assets.* In the event that the CORPORATION exercises its right to purchase a Covered Asset pursuant to § 13 or § 15 of this Agreement, the excess, if any, of the purchase price paid by the CORPORATION over the fair market value of such asset shall be deemed to be a contribution to the CORPORATION. Fair market value shall be determined, at the election of the CORPORATION, by agreement of the CORPORATION and the ACQUIRING ASSOCIATION, or by

an independent appraisal accepted by the CORPORATION and the ACQUIRING ASSOCIATION.

(h) *Adjustments.* Any contribution or payment by the CORPORATION or the ACQUIRING ASSOCIATION pursuant to this Agreement, any Credit or Debit to the Special Reserve Account, or any accounting or report furnished by the ACQUIRING ASSOCIATION under this Agreement shall be subject to adjustment if it subsequently is determined that such contribution, payment, Credit, Debit, accounting, or report was based upon error or upon a tax determination that has been subsequently adjusted, or was not computed in accordance with the accounting principles prescribed in this Agreement, or, without the approval of the CORPORATION and the ACQUIRING ASSOCIATION, was otherwise inconsistent with the terms of this Agreement.

(i) *Repayment.* In the event that a court of competent jurisdiction directs the ACQUIRING ASSOCIATION to divest itself of the assets it acquired and the liabilities it assumed from any ACQUIRER ASSOCIATION or directs the ACQUIRER to divest itself of the stock of the ACQUIRING ASSOCIATION, the contribution made pursuant to §§ 6(a), § 6(c) and § 6(g) and all amounts debited to the Special Reserve Account pursuant to §§ 3(a)(1), (2) and (9) less all amounts credited to the Special Reserve Account pursuant to §§ 3(c)(1), (4), and (9) shall be repaid to the CORPORATION by the ACQUIRING ASSOCIATION; *provided*, that amounts credited or debited to the Special Reserve Account shall be included in the calculation required by this § 6(i) only to the extent such Debits or Credits relate to periods for which payments have been made, or no payments were required to be made pursuant to § 6(b) or § 6(f), and *further provided*, that no such payments will be made

until after the Acquirer has fully recovered its capital investment in the ACQUIRING ASSOCIATION, and the Acquirer and the Acquiring Association have fully recovered all of their reasonable out-of-pocket expenses to unaffiliated third parties incurred by them or on their behalf on or after the Effective Date in connection with the Acquisition and the Mergers.

Section 7. *Indemnification.* To the extent not otherwise reimbursed or Reimbursable, the CORPORATION will indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE for, and pay, as provided in this § 7, the amounts actually paid by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE or all of them in connection with the satisfaction, settlement, or compromise of the following liabilities, Claims and challenges to the Acquisition and the Mergers (except that the ACQUIRING ASSOCIATION, but not the ACQUIRER, STATESMAN or AMERICAN LIFE, shall be indemnified as to liabilities described in § 7(a) below); the reasonable costs and expenses of litigation related to such liabilities, Claims and challengers to the Acquisition and the Mergers, including reasonable attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses; and such other actual and reasonable costs as may be actually incurred and payable by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE in connection with such satisfaction, settlement, or compromise, or defense of such liabilities, Claims or challenges ("Indemnifiable Losses"); *provided*, that the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE comply with the covenants set forth in § 12; and *provided further*, that such costs and expenses shall be subject to

approval by the CORPORATION which shall not be unreasonably withheld as being related to matters subject to indemnification under this § 7; and *provided further*, that the reports required by § 11(a) and (f) of this Agreement, in a form satisfactory to the CORPORATION, shall be submitted to the CORPORATION before such costs and expenses will be paid by the CORPORATION pursuant to § 6(b) of this Agreement; and *provided further*, that the CORPORATION will indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE for such amounts as relate to liabilities or Claims described in this § 7 and respect to any subsidiary (other than Federated Financial) only to the extent of an ACQUIRED ASSOCIATION's investment in such subsidiary as of the Effective Date.

(a) *Undisclosed Liabilities.* Except as provided in this § 7(a), and liabilities of any ACQUIRED ASSOCIATION or any subsidiary thereof (other than Federated Financial) to the extent such liabilities were not fully disclosed in, or fully reflected as a liability on, the books and records of any ACQUIRED ASSOCIATION or its subsidiaries immediately prior to the Effective Date and which, under GAAP as of the Effective Date consistently applied, are of the type that are reserved for, disclosed, or reflected as liabilities, but excluding any inadequacy in or lack of an asset valuation allowance or specific reserve; *provided* that, in the event that the satisfaction, settlement, or compromise of any liability or liabilities described in this § 7(a) results in the acquisition by the ACQUIRING ASSOCIATION of an asset or assets, then at the CORPORATION's election:

(1) The ACQUIRING ASSOCIATION shall assign such asset or assets to the CORPORATION without cost to the CORPORATION; or

(2) The amount paid by the CORPORATION pursuant to this § 7(a) shall be limited to the amount, if any, by which the amounts paid by the ACQUIRING ASSOCIATION in connection with the satisfaction, settlement, or compromise of such liability or liabilities exceed the fair market value of the asset or assets, if any, acquired as a consequence of the satisfaction, settlement, or compromise of such liability or liabilities as determined by agreement between the ACQUIRING ASSOCIATION and the CORPORATION, or by an appraisal mutually approved by the CORPORATION and the ACQUIRING ASSOCIATION and performed by an independent appraiser acceptable to the CORPORATION, the cost of which appraisal shall be paid by the CORPORATION.

The CORPORATION's obligation to provide indemnification under this § 7(a) shall not extend to liabilities of any ACQUIRED ASSOCIATION or its subsidiaries incurred prior to the Effective Date which normally recurred in such ACQUIRED ASSOCIATION's or its subsidiaries' ordinary course of business and operations, which are ordinary posted on the books and records of such ACQUIRED ASSOCIATION or its subsidiaries on a periodic basis, and which are in amounts that are materially the same as and can reasonably be predicted from prior postings on the books and records of such ACQUIRED ASSOCIATION or its subsidiaries concluding, but not limited to, items such as accrued employee salaries, utility bills, accrued interest due to depositors and accountholders, and accrued interest payable to the Bank or the Federal Home Loan Bank of Atlanta, or any other lender to such ACQUIRED ASSOCIATION; *provided* that, with respect to accrued interest payable to a lender, the underlying obligation to pay principal is reflected on the books and records of any ACQUIRED ASSOCIATION.

(b) *Unreserved for Claims.* Any Claim against any ACQUIRED ASSOCIATION, the ACQUIRING ASSOCIATION as its successor, the ACQUIRER, STATESMAN, AMERICAN LIFE or any subsidiary of an ACQUIRED ASSOCIATION (other than Federated Financial), based upon an action or failure to act on the part of such ACQUIRED ASSOCIATION or such subsidiary prior to the Effective Date, whether dated before or after the Effective Date, to the extent that such Claim:

(i) was not adequately reserved for or adequate provision was not made for its payment on the books and records of such ACQUIRED ASSOCIATION or such subsidiary prior to the Effective Date as reflected in the Initial Audit; and

(ii) is not Reimbursable under any insurance equity, bond, or other provision for funding.

(c) *Challenges to the Acquisition or the Mergers.* Any action brought by any person other than the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, or any Affiliate, subsidiary, service corporation, accountholder, stockholder (if any), or creditor of any of them, within one year following the Effective Date to challenge or set aside the Acquisition or any merger, in whole or in part, or this Agreement, that is grounded from a claim that an action or failure to act by the Bank Board or the CORPORATION was not in accordance with the Bank Board's or the CORPORATION's enabling legislation, and, in the event that a court of competent jurisdiction, by final order, directs the ACQUIRING ASSOCIATION to divest itself of any MERGED ASSOCIATION of the assets and liabilities of the CLOSED ASSOCIATION on such ground, the capital investment of the ACQUIRER in the ACQUIRING ASSOCIATION and the reasonable, out-of-pocket

expenses of unaffiliated third parties incurred by the ACQUIRER or the ACQUIRING ASSOCIATION or on behalf of either of them on or after the Effective Date in connection with the Acquisition and the Mergers; *provided*, that such reasonable costs and expenses are attributable to such action or failure to act by the Bank Board of the CORPORATION, and *provided further*, that the ACQUIRER and the ACQUIRING ASSOCIATION are unable to recover such amounts, despite good faith efforts, in the divestiture.

(d) *Pursuit of Related Claims.* The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall, in accordance with the management standards described in § 12(a) of this Agreement, use their best efforts to reimburse, reduce or minimize the CORPORATION's indemnity payments under § 7 or § 12(d)(7) and any contribution under § 6(a) or (b), by the pursuit of Related Claims, whether discovered before or after the Effective Date. The CORPORATION shall indemnify and pay, as provided in this § 7(d) of this Agreement, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE for reasonable and related costs and expenses, incurred in connection with the prosecution of a Related Claim, including, but not limited to, reasonable attorneys' and accountants' fees, travel expenses, court costs and related litigation expenses, but only to the extent that such actual and reasonable costs and expenses are not otherwise reimbursed or Reimbursable; *provided*, that the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE comply with the covenants set forth in § 12 of this Agreement; and *provider further*, that the pursuit of Related Claims shall be subject to approval by the CORPORATION

and the reports required § 11(a) and (f) of this Agreement, in forms satisfactory to the CORPORATION, shall be submitted to the CORPORATION before costs and expenses related to the pursuit of Related Claims shall be paid by the CORPORATION. All sums recovered on each of such Related Claims in excess of the value of such Related Claims reflected on the books and records of the ACQUIRED ASSOCIATIONS immediately prior to the Effective Date, as adjusted by the Initial Audit and as thereafter adjusted or determined in accordance with the accounting principles required by this Agreement, shall be credited to the Special Reserve Account pursuant to § 3(c)(10) of this Agreement. Any such sums recovered after the Termination Date shall be paid over to the CORPORATION to the extent that the CORPORATION has made contributions pursuant to this Agreement, and otherwise shall be retained by the ACQUIRING ASSOCIATION.

(e) *Payments as Contributions.* All payments made by the CORPORATION to the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE under this § 7 shall be considered contributions under this Agreement.

(f) *Limitations on Indemnification and Federated Financial Loan Losses.*

(1) The indemnification provided for in this § 7 with respect to Federated Financial shall be limited to Indemnifiable Losses arising from or related to the pending results and litigation threatened in a writing delivered to Federated Financial or to the CLOSED ASSOCIATION prior to the Effective Date.

(2) The ACQUIRING ASSOCIATION may charge as a Debit to the Special Reserve Account pursuant to § 3(a)(3) of this Agreement the amount of any Indemnifiable Loss arising from it related to the

lawsuits or threatened litigation identified in § 7(f)(1) hereto or liabilities of and Claims against the ACQUIRING ASSOCIATION in any way based on activities of Federated Financial, or charge as a Debit to the Special Reserve Account pursuant to § 3(a)(13) of this Agreement the amount of any Federated Financial Loan Loss; *provided* that the total amount of any such debits authorized by this § 7(f)(2) shall not exceed $15 million in the aggregate.

(3) The CORPORATION's obligation to provide indemnification under this § 7 shall not extend beyond five years near the Effective Date, subject to the provisions of §§ 7(c) and 19 of this Agreement.

Section 8. *Acquired Association Claims and Related Claims.*

(a) The ACQUIRING ASSOCIATION shall in good faith and accordance with the management standard described in § 7(a)(1) of this Agreement exercise its best efforts in pursuing and filing actions on all potentially recoverable Acquired Association Claims, whether discovered before or after the Effective Date. Provided that the ACQUIRING ASSOCIATION complies with the covenants set forth in § 12, the CORPORATION will indemnify the ACQUIRING ASSOCIATION for all reasonable costs the expenses actually incurred and payable by the ACQUIRING ASSOCIATION in connection with the prosecution of an Acquired Association Claim, including, but not limited to, reasonable attorneys' and accountants' fees, travel expenses, court costs and related expenses in connection with such prosecution, but not to the extent that such costs and expenses are not otherwise Reimbursed or Reimbursable; *provided further*, that the prosecution of an Acquired Association Claim shall be subject to approval by the CORPORATION and the reports required by this Agreement, in a form

satisfactory to the CORPORATION, shall be submitted to the CORPORATION before costs and expenses related to the prosecution of an Acquired Association Claim shall be paid by the CORPORATION. Any amount paid by the CORPORATION pursuant to this subsection shall be considered to be a contribution by the CORPORATION to the ACQUIRING ASSOCIATION.

(b) At any time during the term of this Agreement and until the later of ninety (90) days after the Termination Date, or termination of the CORPORATION's obligation to provide assistance pursuant to §§ 16 or 19 of this Agreement, the CORPORATION shall have the right to obtain from the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE, where appropriate, an Assignment of any Acquired Association Claim or Related Claim or the Net Proceeds Received from the Liquidation of any such Claim. If an Acquired Association Claim or Related Claim had a value reflected on the books and records of any MERGED ASSOCIATION immediately prior to the Effective Date, the CORPORATION shall [illegible] for such assignment that value, as adjusted by the Initial Audit and as thereafter adjusted or determined in accordance with the accounting principles required by this Agreement. The purchase price shall be debited to the Special Reserve Account pursuant to § 3(a)(8) of this Agreement as of the assignment date, if the transfer occurs prior to the Termination Date, or shall be paid in cash to the ACQUIRING ASSOCIATION by the CORPORATION within ten (10) days after completion of such assignment if assignment occurs after the Termination Date. In order to facilitate the transfer of any Acquired Association Claim or Related Claim, the ACQUIRING ASSOCIATION, the ACQUIRER,

STATESMAN and AMERICAN LIFE, where appropriate, shall, at the CORPORATION's request:

(1) Execute and deliver such instruments of assignment or transfer and make endorsements in such form and manner, and at such times, as the CORPORATION requires;

(2) Execute and deliver all other instruments that the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE possess and the CORPORATION deems necessary to complete such assignment or transfer; and

(3) Deliver to the CORPORATION all documents and manner materials in their possession or control, and use their best efforts to obtain any further information that the CORPORATION deems necessary to prosecute effectively any Acquired Association Claim or Related Claim.

(c) If the ACQUIRING ASSOCIATION has recovered on an Acquired Association Claim, the Net Proceeds Received upon the Liquidation of such Claim, in excess of the value, if any, of such Claim reflected on the books and records of the ACQUIRED ASSOCIATION on or prior to the Effective Date, as adjusted by the Initial Audit and as thereafter adjusted or determined in accordance with the accounting principles required by this Agreement, shall be credited to the Special Reserve Account pursuant to § 3(c)(10) of this Agreement. Recoveries on Related Claims by the ACQUIRING ASSOCIATION shall be similarly credited, as provided in § 7(d) of this Agreement.

(d) If the CORPORATION has recovered on an Acquired Association Claim or Related Claim that has been assigned to the CORPORATION, the Net Proceeds Received upon the Liquidation of such Claim shall be retained by the CORPORATION to the

extent of the amount, if any, paid by the CORPORATION for the assignment of such claims and to the extent of any other contributions made by the CORPORATION pursuant to this Agreement.

(e) Any recoveries by the CORPORATION on Acquired Association Claims or Related Claims exceeding the aggregate amount to be retained by the CORPORATION pursuant to § 8(d) of this Agreement shall be debited to the Special Reserve Account pursuant to § 3(a)(8) of this Agreement.

(f) The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE shall promptly notify the CORPORATION of any evidence that they discover indicating a basis for an Acquired Association Claim or Related Claim, and covenant to use their best efforts, cooperate fully and take all such actions as are necessary to assist the CORPORATION in the pursuit of such Claims assigned to the CORPORATION pursuant to this Agreement.

Section 9. *Duplicate Payments.* Any cost or expense for which the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE has been reimbursed under any section of this Agreement, or any recovery which has been paid over to or retained by the CORPORATION under any section of this Agreement, shall not also be reimbursed to the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE or paid over to or retained by the CORPORATION, under any other section of this Agreement, even though such cost, expense, or recovery may be described in whole or in part in two or more sections of this Agreement.

Section 10. *Non-Reimbursable Expenses.* The ACQUIRING ASSOCIATION shall not seek reimbursement from the CORPORATION for expenses incurred

in the administration of this Agreement. For purposes of this § 10, such expenses shall include, but shall not be limited to, compensation paid to employees or agents of the ACQUIRING ASSOCIATION for services performed in connection with the preparation of reports and supporting documentation required to be filed with the CORPORATION under § 11 of this Agreement.

Section 11. *Reports, Records.* In the event of the failure of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, to comply with any of the following requirements, the CORPORATION may delay payment of a related charge for reimbursement under this Agreement until, in the CORPORATION's reasonable judgment, the ACQUIRING ASSOCIATION meets such requirement.

(a) *Quarterly Reports.* Within thirty (30) days following the end of each Quarter, the ACQUIRING ASSOCIATION shall furnish a report or reports to the CORPORATION, in a format approved by the CORPORATION and supported by such data as, in the CORPORATION's judgment, may be necessary for verification, which report or reports shall include:

(1) an accounting of all Debits and Credits to the Special Reserve Account;

(2) itemization of payments made by and due from the CORPORATION, which, with respect to charges by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE for reimbursement of attorneys' and accountants' fees pursuant to § 7 of this Agreement, shall be supported by the following documentation and by such other documentation as the CORPORATION may request:

(A) Copies of itemized statements of charges received by the ACQUIRING ASSOCIATION, the

ACQUIRER, STATESMAN or AMERICAN LIFE from each law firm and accounting firm, specifying with respect to each Claim, undisclosed liability, cause of action challenging the Acquisition or any Merger, or other matter for which reimbursement is sought:

(i) the nature and resulting work product of each service performed by each attorney and accountant;

(ii) the identify of the person who performed each service;

(iii) the date on which each service was performed;

(iv) the hourly rate charged for each service; and

(v) the total number of hours billed such services; and

(B) Copies of any letters, contracts, or other documents that set forth the agreement between the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE and such law firms and accounting firms concerning the basis on which fees and other compensation due such attorneys and accountants from the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE are to be computed.

(3) A statement of payments made by or due from the ACQUIRING ASSOCIATION under this Agreement.

(4) Status reports on all current and potential claims and liabilities, with litigation evaluation reports current within thirty (30) days, that may result in a Debit or Credit to the Special Reserve Account, other than litigation in connection with an uncontested Foreclosure action.

(b) *Reports on Covered Assets.* The ACQUIRING ASSOCIATION shall submit to the CORPORATION

reports concerning Covered Assets that fall within the categories described below. Such reports shall be in a form mutually satisfactory to the CORPORATION and the ACQUIRING ASSOCIATION and shall be submitted within thirty (30) days of the end of each Quarter during the term of this Agreement, unless for good cause the CORPORATION extends the time for submission of any report:

(1) loans, delinquent more than ninety (90) days or loans to be foreclosed, showing date of commencement of foreclosure;

(2) the anticipated date of the Foreclosure sale for all loans on which Foreclose has commenced; and

(3) Real Estate Owned, showing the anticipated disposition of such, including listing prices and sales methods.

(c) *Final Accounting.* Within ninety (90) days after the date this Agreement terminates, or such longer time as the CORPORATION may permit, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall render to the CORPORATION a final accounting, and shall include such information and be in such form as the CORPORATION shall request.

(d) *Access to Books and Records.* The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall make available to the CORPORATION all books, papers, records, and information of any kind relating to any or all matters subject to the provisions of this Agreement, including any such materials or information in the possession of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN, AMERICAN LIFE or any of their Affiliates, subsidiaries, service corporations, agents, or counsel.

(e) *Audits and Examinations.* The CORPORATION may audit or examine the ACQUIRING

ASSOCIATION, the ACQUIRER, STATESMAN, AMERICAN LIFE or any of their Affiliates, service corporations, or subsidiaries, with respect to transactions affecting the implementation of this Agreement at any time upon reasonable notice. Such audits shall be conducted by the CORPORATION at its own expense but, it requested by the CORPORATION, with the assistance of the personnel of any of the parties hereto whose salaries and expenses shall be paid by the appropriate carry without reimbursement from the CORPORATION.

(f) *Reports Concerning Prosecution of Claims by Court Action and Settlement of Claims and Liabilities.*

(1) In requesting the CORPORATION's written consent, pursuant to § 12(a) of this Agreement, to engage attorneys or accountants the cost of whose services may be debited to the Special Reserve Account, or otherwise to incur expenses which may be debited to the Special Reserve Account under § 3(a)(3) of this Agreement in connection with the pursuit of a Related Claim, which may be chargeable to the CORPORATION in connection with the pursuit of Acquired Association Claims, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, promptly upon determining the necessarily to engage such attorneys or accountants or otherwise to incur such expenses, shall obtain and submit to the CORPORATION the following information, in a form satisfactory to the CORPORATION, supported by the supplementary documentation as in the opinion of the CORPORATION is necessary to enable the CORPORATION to give an informed consent to the ACQUIRING ASSOCIATION's, the ACQUIRER's, STATESMAN's or AMERICAN LIFE's engaging such attorneys or

accountants or otherwise incurring such expenses, which information shall include, but shall not be limited to, the following:

(A) The parties to the dispute and the relationships among them;

(B) The nature of the dispute and the basic facts concerning the dispute; and

(C) A description of the specific actions taken by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE in pursuit of such Claim prior to determining the need to engage attorneys or accountants or otherwise to incur expenses in pursuit of such Claim.

(2) In requesting the CORPORATION's written consent, pursuant to § 12(b) of this Agreement, to prosecute any Related Claim or Acquired Association Claim by court action, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, were appropriate, promptly upon determining the necessity for such court action, shall obtain and submit to the CORPORATION an opinion prepared by the attorney handling such Claim in a form satisfactory to the CORPORATION and its counsel, supported by such supplementary documentation as in the opinion of counsel to the CORPORATION is necessary to enable the CORPORATION to give an informed consent to the prosecution of such Claim by court action, which opinion shall include, but shall not be limited to the following:

(A) The parties to the dispute and the relationships among them;

(B) The nature of the dispute and the basic facts concerning the dispute;

(C) A discussion of the causes of action raised by the dispute and the defenses to such causes of action, including citations to relevant statutes and

significant case law, and the attorney's evaluation of the merits of such causes of action and defenses; and

(D) The attorney's estimate of the time involved in prosecuting the Claim by court action, and the foreseeable costs and expenses, including attorneys' fees, which will be incurred in prosecuting the Claim by court action.

(3) In requesting the CORPORATION's written consent, pursuant to § 12(b)(5) of this Agreement, to enter into a binding commitment with respect to the satisfaction, settlement, or compromise of any Claim, liability or challenge referred to in § 12(b)(5)(C) and (D) of this Agreement, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, promptly upon determining that the satisfaction, settlement, or compromise is appropriate, shall obtain and submit in the CORPORATION an opinion prepared by the attorney handling any such Claim, liability, or challenge, in a form satisfactory in the CORPORATION and its counsel, supported by such supplementary documentation as in the opinion of counsel to the CORPORATION is necessary to enable the CORPORATION to give an informed consent to such satisfaction, settlement, or compromise of such Claim, liability, or challenge, which opinion and supporting documentation shall include, but shall not be limited to, the following:

(A) The information required by subparagraphs (2)(A)-(D) of this § 11(f);

(B) Information concerning the status of litigation regarding the Claim, liabiiity, or challenge if litigation has been instituted, and, at the request of the CORPORATION, copies of all pleadings or other documents which have been filed in connection with such litigation; and

(C) The precise terms of the satisfaction, settlement, or compromise and the attorney's basis for

recommending the proposed satisfaction, settlement, or compromise of such Claim, liability or challenge.

(g) *Reports on Net Tax Benefits.* Unless waived by the CORPORATION, in each year the ACQUIRING ASSOCIATION shall submit a report to the CORPORATION, prepared by the ACQUIRING ASSOCIATION independent auditors and in a form and at a level of detail satisfactory to the CORPORATION, showing the total Tax Benefit Items available to the ACQUIRING ASSOCIATION, the total Tax Benefit Items, if any, utilized in such year, and the calculation of the Net Tax Benefits, if any, for such year. Such report shall be due on the date Net Tax Benefits, if any, are required to be credited to the Special Reserve Account or paid to the CORPORATION pursuant to § 3(c)(11) of this Agreement.

(h) *Other Reports.* The ACQUIRING ASSOCIATION shall provide upon demand by the CORPORATION such other reports concerning the status and condition of any asset or liabilities of the ACQUIRING ASSOCIATION as the CORPORATION reasonably may require.

Section 12. *Covenants of STATESMAN, AMERICAN LIFE, the ACQUIRER and the ACQUIRING ASSOCIATION.* The ACQUIRING ASSOCIATION covenants as follows:

(a) *Administration of Assets and Liabilities.* The failure of STATESMAN, AMERICAN LIFE, the ACQUIRER or the ACQUIRING ASSOCIATION to comply with any of the covenants in this § 12(a) with respect to any asset or liability acquired or assumed from the ACQUIRED ASSOCIATIONS, or with respect to any Related Claim or Acquired Association Claim, shall result in the disallowance of Debits to the Special Reserve Account that are related to such failure to comply or the adjustment of a contribution

or payment by the CORPORATION that is related to such failure to comply.

(1) *Management Standard.* The ACQUIRING ASSOCIATION shall administer and deal with all assets, liabilities and Claims to which it will succeed from the ACQUIRED ASSOCIATIONS, employing the standard or prudent business practice used by the ACQUIRING ASSOCIATION in administering assets, liabilities and Claims of the ACQUIRING ASSOCIATION not obtained from the ACQUIRED ASSOCIATIONS. Furthermore, the ACQUIRING ASSOCIATION shall use its best efforts in accordance with the management standard described in this subparagraph, to maximize losses and maximize gains and recoveries in the best interests of STATESMAN, AMERICAN LIFE, the ACQUIRER, the ACQUIRING ASSOCIATION and the CORPORATION.

(2) *Pursuit of Claims.*

(A) The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall exercise their best efforts, in accordance with §§ 8 and 12(a)(1), to pursue and file actions on all potentially recoverable Acquired Association Claims and Related Claims which accrue to the ACQUIRING ASSOCIATION as successor in interest to the ACQUIRED ASSOCIATIONS or arise otherwise, including, but not limited to, claims under the appropriate fidelity bond(s) or insurance policy or policies of the ACQUIRING ASSOCIATION or the ACQUIRED ASSOCIATIONS, whether discovered before or after the Effective Date.

(B) The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, shall notify the CORPORATION before pursuing any Related Claim or Acquired Association Claim which could result in a Debit or

Credit to the Special Reserve Account. The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE, where appropriate, agree institute any legal action with respect to a Related Claim or Acquired Association Claim requested by the CORPORATION in connection with this Agreement. If the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE objects to any such request, it shall provide its reasons in writing to the CORPORATION. If, after receipt of such statement, the CORPORATION nevertheless determines that a reasonable basis exists for instituting such legal action, then the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall institute such action. The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE, where appropriate, will be indemnified by the CORPORATION for all losses resulting from, and reasonable costs and expenses of pursuing, the action excepting only losses arising from and to the extent attributable to the ACQUIRING ASSOCIATION's, the ACQUIRER's, STATESMAN's or AMERICAN LIFE's negligence or lack of the diligence in pursuing or prosecuting the action.

(b) *Conduct of Litigation.* With respect to all facilities, Claim, and challenges that could result in or effect a Debit or Credit to the Special Reserve Account ("Matter"), the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, as appropriate, shall:

(1) Keep the CORPORATION fully informed of the status of such Matters by timely filing current reports pursuant § 11 of this Agreement;

(2) Observe the right of the CORPORATION to monitor and direct the defense or prosecution of such

Matters, including the right to direct the ACQUIRING ASSOCIATION to file a petition to remove an action to the appropriate court or to repeal any determination of any court; *provided* that the CORPORATION shall bear the cost of removal or appeal and of monitoring and directing such defense or prosecution;

(3) Authorize the CORPORATION, upon the CORPORATION's election and at the CORPORATION's expense and with its own attorneys, to defend or to prosecute in the name of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN, AMERICAN LIFE or the CORPORATION, as the case may be, any such Matter, and cooperate fully with the CORPORATION in such defense or prosecution, including, not limited to, furnishing to the CORPORATION all applicable books, records, and other information in the possession of the ACQUIRING ASSOCIATION, the ACQUIRER or any of their Affiliates, service corporations, or subsidiaries;

(4) At the request of the CORPORATION, assign to the CORPORATION, and subrogate the CORPORATION to, any right, title, or interest of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE in any such Claim, liability, challenge, any related defense (including counterclaim and settle), and any proceeds, and, in the event of such assignment, cooperate fully with the CORPORATION in the defense or prosecution of any such Claim, liability, or challenge, including, but not limited to, furnishing to the CORPORATION all books, records, and other information that are in the possession of the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN, AMERICAN LIFE or any of other Affiliates, subsidiaries, service corporations, agents or counsel; *provided*, that if a Claim had a

value on the books and records of any ACQUIRED ASSOCIATION immediately prior to the Effective Date, the ACQUIRING ASSOCIATION shall Debit such value, and adjusted or determined in accordance with the accounting principles required by this Agreement, to the Special Reserve Account; and

(5) By submission of a written request on a form pre-approved by the CORPORATION, obtain the CORPORATION's written consent before:

(A) engaging attorneys or accountants to pursue a Related Claim or Acquired Association Claim, the cost to those services may be chargeable to the CORPORATION pursuant to § 7 or § 8 of this Agreement, or otherwise incurring expenses in connection with a Related Claim or Acquired Association Claim may be chargeable to the CORPORATION pursuant to § 7 or § 8 of this Agreement;

(B) prosecuting any Related Claim or Acquired Association Claim by court action;

(C) entering into any binding commitment with respect to the satisfaction, settlement, or compromise of any Related Claim, Acquired Association Claim or challenge to the Acquisition or any Merger described in § 7(c); or

(D) entering into any binding commitment with respect to the satisfaction, settlement, or compromise of any Claim for which the CORPORATION is obligated to indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, other than a Related Claim, Acquired Association Claim, or a challenge to the Acquisition or any Merger, unless such satisfaction, settlement, or compromise would involve payment by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE of an aggregate amount not in excess of Twenty-Five Thousand Dollars

($25,000.00), or is entered into pursuant to an adjudication by a court of competent jurisdiction which, with the permission of the CORPORATION, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE has not appealed.

(c) *Covered Asset Restrictions.* The ACQUIRING ASSOCIATION shall not, without the CORPORATION's written consent (which shall be granted or denied within a reasonable period of time following receipt of a request for such consent) unless the CORPORATION waives such requirement in writing:

(1) lease any Covered Asset for a fixed term of more than one year;

(2) engage the services of any consultant, attorney, accountant, agent, or other professional in connection with the management or administration of any Covered Asset the cost of whose services may be debited to the Special Reserve Account pursuant to § 3(a); and

(3) extend, modify, or sell at a loss any loan or contract that is a Covered Asset, or extend or modify any loan or contract that could become a Covered Asset and result in a Debit to the Special Reserve Account; *provided* that, at the direction of the CORPORATION, the ACQUIRING ASSOCIATION shall sell any such loan or contract; *provided* that the CORPORATION's consent shall not be required if such Covered Asset is a Participation Interest and if the ACQUIRING ASSOCIATION used its best efforts to oppose any such action identified in subsections (1), (2), or (3) above.

(d) *Covered Asset Requirements.* The ACQUIRING ASSOCIATION shall, unless the CORPORATION waives any such requirement in writing:

(1) submit to the CORPORATION upon request an independent appraisal, acceptable to the CORPORATION, of any Covered Asset;

(2) promptly institute Foreclosure proceedings, as provided in § 14 of this Agreement, with respect to any loan that is a Covered Asset (other than a Participation Interest), unless the CORPORATION has given written approval for an alternative action;

(3) proceed promptly, within those procedures provided for in § 14 and in accordance with prudent business practice, with the Liquidation of any Real Estate Owned that is a Covered Asset (other than a Participation Interest);

(4) retain all written offers to purchase any Covered Asset pending inspection by the CORPORATION and not dispose of any such offer without the CORPORATION's prior written approval;

(5) use its best efforts, in accordance with the management standard described in § 12(a)(1) of this Agreement, to cause each parcel of Real Estate Owned, each Covered Asset or the property securing each Covered Asset, to be insured against loss or damage by fire (extended coverage), flood and any other such hazards that may normally be encountered with respect to such property and, to the extent applicable, in accordance with § 571.4 of the Insurance Regulations, or any successor regulation. Where appropriate, all insurance contracts shall contain the standard mortgage loss payable clause in favor of the ACQUIRING ASSOCIATION; and

(6) finance the disposition of Real Estate Owned for a Covered Asset in accordance with the ACQUIRING ASSOCIATION's normal underwriting standards, and without assistance from the CORPORATION except as may otherwise by provided pursuant to § [illegible](a) of this Agreement.

(7) with respect to any loan that is a Covered Asset, use its best efforts, in accordance with the management standard described in § 12(a)(1) of this Agreement, to undertake any and all actions directed by the CORPORATION to collect on such debt, including the institution and prosecution of legal action against the borrower; *provided* that

(A) in the event that the CORPORATION directs the ACQUIRING ASSOCIATION to institute and prosecute legal action against the borrower, any Claim of the ACQUIRING ASSOCIATION arising in connection with such action shall be seemed to be a Related Claim under this Agreement and the CORPORATION shall indemnify the ACQUIRING ASSOCIATION with respect to the pursuit of such Related Claim in accordance with § 7 of this Agreement;

(B) any sums recovered from a Related Claim under this § 12(d)(7) shall be credited to the Special Reserve Account pursuant to § 3(c)(10) of this Agreement; and

(C) any payment due from the CORPORATION to the ACQUIRING ASSOCIATION under this § 12(d)(7) shall be debited to the Special Reserve Account pursuant to § 3(a)(3) of this Agreement and deemed to be a contribution under this Agreement.

(e) *Disclosure of Agreement.* Except as otherwise required by law or generally accepted accounting principles, the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE shall not, without the prior consent of the CORPORATION, disclose the terms of this Agreement, or the obligation of the CORPORATION to indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE to any person, other than its employees or agents.

(f) *Tax Benefits.* The ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall treat all Tax Benefit Items received from the CORPORATION on tax returns in such a manner as to maximize Net Tax Benefits that may result in a credit to the Special Reserve Account pursuant to § 3(c)(7), payment to the CORPORATION, or reduction in the loss incurred by the CORPORATION, *provided* that this covenant shall not be interested as requiring the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE (i) to take any return position that (A) would be inconsistent with a published position of the Internal Revenue Service, unless the CORPORATION, after receipt for a request from the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, provides an opinion of independent counsel to the effect that such return position has a substantial likelihood of success, or (B) would increase a tax liability, or (ii) to make an election to file a separate return to satisfy this covenant. In the event that any such return position should be challenged by the Internal Revenue Service, the taxpayer shall (with the prior consent and at the expense of the CORPORATION, including reasonable attorneys' fees) take such steps as may reasonably be necessary to contest such challenge whether by way of contesting a proposed deficiency or by way of a refund claim), *provided* that the taxpayer may cease to defend such return position if it determines in good faith after prior consultation with the CORPORATION that further defense of such return position would adversely affect its federal income tax posture viewed as a whole. The CORPORATION shall cooperate with the ACQUIRING ASSOCIATION in all reasonable ways to assist the ACQUIRING ASSOCIATION in

establishing its entitlement to the Net Tax Benefits, including in connection with any possible audit by the Internal Revenue Service with respect thereto, and shall make such supporting documentation, not privileged or confidential, available to the ACQUIRING ASSOCIATION as the ACQUIRING ASSOCIATION may reasonably request. The covenants in this § 12(f) shall survive the Termination Date.

Section 13. *Sale and Repair of Covered Assets.*

(a) Unless otherwise permitted by the CORPORATION, compliance with the terms of this section shall be a condition precedent to the ACQUIRING ASSOCIATION's right to Debit to the Special Reserve Account, pursuant to § 3 of this Agreement, the amount of any loss on the Covered Asset, or to add to the Book Value of any Real Estate Owned that is a Covered Asset, any expenditure to repair, rehabilitate, or complete Real Estate Owned that is a Covered Asset, or portion thereof, that exceeds the applicable limitation of § 13(e) of this Agreement; *provided* that the terms of this section shall not apply to Participation Interests.

(b) As soon as practicable and not less than forty-five (45) days prior to the offering for sale of Real Estate Owned that is a Covered Asset as of the Effective Date, and otherwise within forty-five (45) days after the completion of a Foreclosure, including any applicable redemption period, of a loan that constitutes a Covered Asset and results in the acquisition of Real Estate Owned, the ACQUIRING ASSOCIATION shall provide to the CORPORATION a schedule of each such Covered Asset, setting forth a description of the Covered Asset, its Book Value, its estimated market value, the recommended listing sales price, the minimum sales price, the proposed terms of sale, and the estimated selling costs, and, unless waived by the

CORPORATION, an appraisal acceptable to the CORPORATION of each such Covered Asset.

(c) Within thirty (30) days after receipt of a schedule and an appraisal required by § 13(b), the CORPORATION shall:

(1) approve the proposed minimum sales price and the terms of sale for each Covered Asset, which may then be sold at less than such approved minimum sales price, upon the approved sales terms, without further notice to the CORPORATION; or

(2) disapprove the proposed minimum sales price of the terms of sale for any Covered Asset and establish a minimum sales price, which shall in no event be more than ninety (90%) percent of the value established by the appraisal, plus one hundred (100%) percent of the estimated selling costs, and the terms of sale. Thereafter, the ACQUIRING ASSOCIATION may sell such asset, at not less than the approved price and upon the approved sales terms, without further notice to the CORPORATION;

(3) purchase such Covered Asset at the lesser of Book Value, ninety (90%) percent of the value established by the appraisal, and the ACQUIRING ASSOCIATION's proposed minimum sales price (minus estimated selling costs). Purchases by the CORPORATION pursuant to this § 13 shall be treated as purchases by third parties for the purposes of §§ 3(a)(1) and 3(c)(1) of this Agreement. The amount payable by the CORPORATION in connection with such a purchase shall be debited to the Special Reserve Account as of the purchase date if the purchase occurs prior to the Termination Date, and shall be paid to the ACQUIRING ASSOCIATION by the CORPORATION in immediately available funds no later than ten (10) days following conveyance to the CORPORATION of the ACQUIRING ASSOCIATION's rights, title, and interest in such Covered

Asset if the purchase occurs after the Termination Date.

(d) The CORPORATION shall evaluate the marketing efforts made by the ACQUIRING ASSOCIATION, all written offers to purchase, current condition, and all other pertinent factors with respect to any Covered Asset on which a sales contract has not been accepted within ninety (90) days from the date on which the CORPORATION approved its sales price. The CORPORATION thereafter shall advise the ACQUIRING ASSOCIATION in writing concerning a revised sales price or additional marketing efforts.

(e) The ACQUIRING ASSOCIATION shall not:

(1) expend for the repair, rehabilitation, or completion of any Real Estate Owned that is a Covered Asset an amount in excess of Ten Thousand Dollars ($10,000.00) for a residential property, or in excess of Five Thousand Dollars ($5,000.00) per family unit plus Twenty Thousand Dollars ($20,000.00) for common areas, up to a maximum of Forty Thousand Dollars ($40,000.00) for a multi-family building, or in excess of Twenty Thousand Dollars ($20,000.00) for a commercial property; or

(2) expend any sum for the repair, rehabilitation, or completion of any Covered Asset that is not Real Estate Owned,

without the prior written consent of the CORPORATION, unless the CORPORATION expressly waives this requirement in writing or unless an emergency exists, such as a deficiency of the asset that violates a

provision of the sanitary, health, building, or notice code of the municipality, county, or state in which the asset is located or that affects its habitability, in which case the ACQUIRING ASSOCIATION may, without the CORPORATION's prior consent, expend such sums as may be necessary to correct or prevent such emergency.

(f) With respect to any Real Estate Owned that is a Covered Asset and for which the estimated costs of repair, rehabilitation, or completion exceed the limitation of § 13 (e), the ACQUIRING ASSOCIATION agrees to prepare a schedule showing Book Value, estimated market value as is, estimated cost to cure, estimated time for completion, and estimated market value as repaired or completed. Schedules for all such real estate shall be submitted within one hundred eighty (180) days from the Effective Date and thereafter as requested by the CORPORATION. Within thirty (30) days of receipt of such a schedule, the CORPORATION will advise the ACQUIRING ASSOCIATION concerning the action it shall take with respect to each asset that appears on the schedule.

(g) The CORPORATION shall have the right at any time to interview real estate agents, brokers, and others to whom listings have been given pursuant to this section.

(h) The CORPORATION, after discussion with the ACQUIRING ASSOCIATION, shall have the right to alter the procedures required by this § 13, including changing the dollar limits of 13(e), *provided* that any such change does not increase the ACQUIRING ASSOCIATION's duties, obligations, or expense of administration under this Agreement. The ACQUIRING ASSOCIATION and the CORPORATION agree

to cooperate to facilitate any possible simplification of procedures under this § 13.

Section 14. *Foreclosures.*

(a) Prior to the Foreclosure of any instrument securing a loan that is or may become a Covered Asset (other than a participation Interest), the ACQUIRING ASSOCIATION shall, upon the CORPORATION's request, inspect and evaluate or appraise the security property to determine its recoverable value, taking into consideration all circumstances affecting marketability of title, including the existence of any mechanic's or materialman's liens or other encumbrances on the security property.

(1) Except as provided in § 14(a)(2) below, if, the opinion of the ACQUIRING ASSOCIATION, the security property has recoverable value and the Book Value of the related covered Asset is less than One Hundred Thousand Dollars ($100,000.00), the ACQUIRING ASSOCIATION shall bid as follows:

(A) if there are no other bidders, the ACQUIRING ASSOCIATION may bid any amount which, in the ACQUIRING ASSOCIATION's opinion, will protect its interests and those of the CORPORATION and is in accordance with the management standard described in § 12(a)(1) of this Agreement. In no event, however, shall the amount of the bid be in excess of the principal amount to the indebtedness secured by such property immediately before foreclosure, plus:

(i) all costs and expenses of foreclosure;

(ii) any taxes and hazard insurance premiums due with respect to real property security, but unpaid as of the date of Foreclosure;

(iii) any accrued and unpaid interest on the principal amount of the indebtedness; and

(iv) any existing encumbrances such as having or sewage liens.

(B) If there are other bidders, the ACQUIRING ASSOCIATION may bid an amount not in excess of the lesser of appraised value and the amount provided in (A) above, *provided* that, in the ACQUIRING ASSOCIATION's opinion, such bid will protect its interests and those of the CORPORATION.

(2) If the ACQUIRING ASSOCIATION proposes to foreclose on a security property which has a recoverable value on the Book Value of the related Covered Asset is One Hundred Thousand Dollars ($100,000.00) or more, it shall so notify the CORPORATION in writing within thirty (30) days of commencing foreclosure and state the Book Value of the Covered Asset and all Interest due thereon, the ACQUIRING ASSOCIATION's estimate of the market value of the property securing such Covered Asset and the amount of the bid proposed for such sale ("first notice"). The ACQUIRING ASSOCIATION shall notify the CORPORATION of the foreclosure sale date when it is determined. Within thirty (30) days of receipt of the first notice, the CORPORATION shall approve the proposed bid; or advise the ACQUIRING ASSOCIATION of any other amount it should bid at such sale; or instruct the ACQUIRING ASSOCIATION to order an independent appraisal of such security property by an appraiser acceptable to the CORPORATION, in which case the CORPORATION shall notify the ACQUIRING ASSOCIATION, within ten (10) days after receipt of an appraisal acceptable to the

CORPORATION, of the amount to be bid at the foreclosure sale.

(b) The ACQUIRING ASSOCIATION shall advise the CORPORATION monthly of all completed Foreclosures subject to 12(a), citing the Book Value, appraised value, and the amount of the successful bid in each case. In addition, if the successful bid, whether by the ACQUIRING ASSOCIATION, or another party, results in a deficiency, the ACQUIRING ASSOCIATION shall advise the CORPORATION concerning the likelihood of securing a judgment against the defaulting mortgagor.

(c) A deed in lieu of Foreclosure or any equivalent instrument may not be obtained and no consideration shall be paid to the debtor under such deed without the written consent of the CORPORATION.

(d) In the case of any instrument securing a nonmortgage loan that is or may become a Covered Asset, the ACQUIRING ASSOCIATION shall follow up on such procedures and take such actions as the CORPORATION may request.

(e) Unless otherwise permitted by the CORPORATION, compliance with the provisions of this section by the ACQUIRING ASSOCIATION shall be a condition precedent to the ACQUIRING ASSOCIATION's right to Debit the Special Reserve Account with respect to any loss resulting from a Foreclosure.

Section 15. *CORPORATION's Right to Purchase Covered Assets.*

(a) At any time during the term of this Agreement and until the later of ninety (90) days after the Termination Date, or termination of the CORPORATION's obligation to provide assistance pursuant to § 19 of this Agreement, the CORPORATION shall

have the right to purchase without recourse against the ACQUIRING ASSOCIATION any or all Covered Assets that have not been liquidated prior to the ACQUIRING ASSOCIATION's receipt of the CORPORATION's notice that it shall exercise its right to purchase, at a purchase rice as stated in § 13(c)(3) of this agreement. Purchases by the CORPORATION pursuant to this § 15 shall be treated as purchases by third parties for the purposes of §§ 3(a)(1) and 3(c)(1) of this Agreement.

(b) The purchase price shall be debited to the Special Reserve Account as of the purchase date if the purchase occurs prior to the termination of this Agreement, or shall be paid to the ACQUIRING ASSOCIATION by the CORPORATION in immediately available funds within ten (10) days following conveyance to the CORPORATION of the ACQUIRING ASSOCIATION's right, title, and interest in such asset if the purchase occurs after the termination of this Agreement. The excess, if any, of the purchase state over the fair market value of such asset shall be deemed to be a contribution by the CORPORATION as provided in § 6 of this Agreement.

(c) In order to facilitate such sale to the CORPORATION, the ACQUIRING ASSOCIATION shall, at the CORPORATION's request:

(1) Provide the CORPORATION with such information as the CORPORATION deems necessary regarding the nature or condition of the Covered Asset and documenting the Book Value of such Covered Asset;

(2) Execute and deliver such instruments of sale, grant, conveyance, or transfer, and make endorse-

ments in such term and manner and at such time as the CORPORATION shall require; and

(3) Execute and deliver all such other instruments together with all insurance policies, title policies, and title certificates which the ACQUIRING ASSOCIATION possesses and are necessary or requisite, in the opinion of the CORPORATION, to complete such sale, grant, conveyance, or transfer.

(d) The Net Proceeds Received by the CORPORATION as a result of Liquidation of any Covered Asset purchased pursuant to 13 or 15 of this Agreement in excess of the purchase price and by the CORPORATION shall be retained by the CORPORATION to the extent it has made contributions under this Agreement that have not been repaid, and the remainder, if any, shall be paid to the ACQUIRING ASSOCIATION.

Section 16. *Sale of Assets of the ACQUIRING ASSOCIATION.* In the event of a Sale (as defined below), within seven (7) years following the Effective Date, by the ACQUIRING ASSOCIATION of any of its assets, or any of the capital stock of any subsidiary or Affiliate of the ACQUIRING ASSOCIATION formed to conduct any of the operations, or hold any of the assets, of the ACQUIRING ASSOCIATION, the ACQUIRING ASSOCIATION shall pay promptly to the CORPORATION a percentage to be agreed upon at such time, but in no event greater than fifty percent (50%), of the net proceeds of such Sale; *provided* that no such sale shall be consummated without the prior written approval of the CORPORATION; and *provided further* that in determining the amount of such net proceeds, an appropriate amount thereof (based upon the ratio of the assets being sold to the total assets of the ACQUIRING ASSOCIA-

TION) shall be allocated as a return of the investment of the ACQUIRER in the ACQUIRING ASSOCIATION. For the purposes of this § 16, the term "Sale" shall mean any and all sales consummated or agreed to during any 90 day period having an aggregate sales price of $20 million. If a Sale shall occur within five (5) years following the Effective Date without the approval of the CORPORATION, which approval may be granted or withhold at the sole discretion of the CORPORATION, notwithstanding the provisions of § 19 of this Agreement, this Agreement and all of the CORPORATION's obligations under it shall terminate immediately after the consummation of the sale. Notwithstanding anything herein to the contrary, the term "Sale" shall not include the transfer to an Affiliate of the ACQUIRER the stock or any or all of the assets and liabilities of Federated Financial, Combined Mortgage Corporation, Homestead Mortgage Corporation or Perpetual Financial Corporation.

Section 17. *Accounting Principles.* Except as otherwise provided, any computations made for purposes of this Agreement shall be governed by GAAP, except that where such principles conflict with the terms of the Agreement, applicable regulations in the Bank Board or the CORPORATION, or any resolution or action in the Bank Board approving or relating to the Acquisition, the Mergers or to this Agreement, then this Agreement, such regulations, or such resolution or action shall govern. In the case of any ambiguity in the interpretation or construction of any provision of this Agreement, such ambiguity shall be resolved in a manner consistent with such regulations and the Bank Board's resolution or action

relating to the Acquisition, the Mergers or of this Agreement. If there is a conflict between such regulations and the Bank Board's resolution or action relating to the Acquisition, the Mergers or to this Agreement, the Bank Board's Resolution or action shall govern. For purposes of this section, the accounting principles and governing regulations shall be those in effect on the Effective Date, as subsequently changed, amended, clarified or interpreted by the Bank Boad (as proposed, for example, at 52 *Fed. Reg.* 39112 *et seq.* (October 20, 1987)), its staff, or the Financial Accounting Standards Board ("FASB"), or any successor organization of the American Institute of Certified Public Accountants ("AICPA"). If there is a conflict between what is required by the FASB or the AICPA and what is required by the Bank Board, the interpretation of the Bank Board shall govern. The valuation of real estate assets shall be in accordance with the Bank Board's proposed regulations published on October 20, 1987 (52 *Fed. Reg.* 39070) or as those regulations are finally adopted by the Bank Board, or any successor regulations then in effect.

Section 18. *Notices.*

(a) Any notice or other communication required or submitted under this Agreement, unless otherwise specifically provided for, shall be deemed given if sent by first class mail, postage prepaid, to a party at its address set forth below or at such other address as the party shall furnish in writing:

If to the CORPORATION:

FEDERAL SAVINGS AND LOAN
INSURANCE CORPORATION

Attn: Director, Financial Assistance Division
1700 G Street, N.W.
Washington, D.C. 20552

If to the ACQUIRING ASSOCIATION:

Statesman Bank for Savings, FSB
Attn: Virgil Maxwell
1400 Des Moines Building
Des Moines, Iowa 50309

If to the ACQUIRER:

Statesman Savings Holding Corp.
Attn: David J. Noble
1400 Des Moines Building
Des Moines, Iowa 50309

If to STATESMAN:

The Statesman Group, Inc.
Attn: D.J. Noble, President
1400 Des Moines Building
Des Moines, Iowa 50309

If to AMERICAN LIFE:

American Life and Casualty Insurance Company
Attn: Jon P. Newsome, President
P.O. Box 2507
Fargo, North Dakota 58108

(b) Unless otherwise specifically provided for, if this Agreement requires that notice be given within a certain period of time, notice shall be deemed given as of the date of writing.

Section 19. *Termination of Agreement.*

(a) Except as otherwise specifically provided in § 16 elsewhere in this Agreement, this Agreement shall terminate five (5) years following the Effective Date or on such other date which the parties or their successors agree in writing, *provided* that if a receiver is appointed for the purpose of liquidating the ACQUIRING ASSOCIATION, or if the ACQUIRING ASSOCIATION ceases to be an association the accounts of which are insured by the CORPORATION, this Agreement and all of the CORPORATION's obligations under it shall terminate upon the effective date of such occurrence.

(b) Upon the Termination Date, the net Credit or Debit balance of the Special Reserve Account, if any, shall be paid or distributed in accordance with the provisions of § 6 of this agreement.

(c) Nothwithstanding termination of this Agreement as prescribed in § 19(a), the CORPORATION shall indemnify the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, as the case may be, for any loss arising from liabilities and Claims to the extent described in § 7 of this Agreement, including the reasonable costs and expenses of related litigation actually incurred and payable by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE and shall indemnify for the reasonable costs and expenses actually incurred and payable by the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, in pursuit of a Related Claim or Acquired Association Claim pursuant to §§ 7 or 8 of this Agreement, *provided*, that any such liability or Claim

is in litigation on the Termination Date; *provided further*, that the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE continue to observe after the Termination Date all covenants, agreements of cooperation, reporting requirements, and agreements for the use of best efforts set forth in this Agreement; *provided further*, that any recovery by the ACQUIRING ASSOCIATION, and ACQUIRER, STATESMAN or AMERICAN LIFE, where appropriate, on any Related Claims or required Association Claims shall be paid over to the CORPORATION, subject to the limitations of §§ 7 and 8; and *provided further*, that the obligation of the CORPORATION stated in this § 19(c) shall terminate as stated in the proviso to § 19(a).

(d) Notwithstanding § 19(a) of this Agreement, the CORPORATION shall consider and act upon, in accordance with this Agreement, all reports, applications, requests, and other submissions that are subject to the CORPORATION's approval, consent, or other action, and that are actually received by the CORPORATION prior to or on the Termination Date, and the ACQUIRING ASSOCIATION, the ACQUIRER, STATESMAN and AMERICAN LIFE shall cooperate in the resolution of all such pending submissions as contemplated in this Agreement. The final accounting required by § 11(c) of this Agreement shall take account of all actions taken and determinations made by the CORPORATION pursuant to this § 19(d) and any related provisions of this Agreement.

Section 20. *Compliance with Law.* The ACQUIRING ASSOCIATION shall, and shall cause its subsidiaries, Affiliates, and service corporations to,

comply in all material respects with all applicable statutes, regulations, orders of, and restrictions imposed by the United States or any state, municipality, or other political subdivision, or by any agency of the foregoing public units, regarding the ownership of its properties and conduct of its business, including, without limitation, all applicable statutes, regulations, orders, and restrictions relating to equal employment opportunities, employment retirement income security, and environmental standards and controls; *provided*, however, that nothing contained in this § 20 shall require the ACQUIRING ASSOCIATION, or any of its subsidiaries, Affiliates, or service corporations, to comply with any law so long as the applicability thereof shall be contested in good faith.

Section 21. *Rights and Forbearances.* The rights, powers, and remedies given to the parties by this Agreement shall be in addition to all rights, powers, and remedies given by any applicable statute or rule of law. Any forbearance, failure, or delay by either party in exercising or partially exercising any such right, power, or remedy shall not preclude its further exercise.

Section 22. *Governing Law.* This Agreement and the parties' rights and obligation under it shall be governed by the law of the State of Iowa, to the extent that Federal law does not control. Nothing in this Agreement shall require any unlawful action or inaction by either party.

Section 23. *Entire Agreement, Severability.*

(a) This Agreement, together with any resolutions adopted by the Bank Board and documents delivered at closing which contain written interpretations or understandings of the parties, constitutes the entire

agreement between the parties and supersedes all prior agreements and understandings of the parties in connection with it, excepting only the Acquisition Agreement, the Merger Agreements and any resolutions or letters concerning the Acquisition, the Mergers or this Agreement issued by the Bank Board or the CORPORATION in connection with the approval of the Acquisition, the Mergers and this Agreement, *provided*, however, that in the event of any conflict, variance, or inconsistency between this Agreement and the Acquisition Agreement or the Merger Agreements, the provisions of this Agreement shall govern and be binding on all parties insofar as the rights, privileges, duties, obligations, and liabilities of the parties are concerned.

(b) If any provision of this Agreement is invalid or reinforceable, all of the remaining provisions of this Agreement shall nevertheless remain in full force and effect and shall be binding upon all the parties hereto.

Section 24. *Counterparts, Modifications, Headings.*

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument, and any party may execute this Agreement by signing any such counterpart.

(b) No amendment or modification of this Agreement shall be binding unless executed in writing by the parties or their successors.

(c) Section headings are not to be considered part of this Agreement, are solely for convenience of reference, and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

Section 25. *Successors and Assigns.* All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective transferees, successors, and assigns, but this Agreement may not be assigned to any party nor may any rights or obligations under it be transferred or delegated to or vested in any other party, through merger, consolidation, or otherwise, without the prior written consent of the CORPORATION.

Section 26. *Sole Benefit.* It is the intention of the parties that this Agreement, the assumption of obligations and statements of responsibilities under it, and all of its conditions and provisions are for the sole benefit of the parties hereto and for the benefit of no other person. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties hereto any legal or equitable right, remedy, or claim under, or in respect to, this Agreement or any of its provisions.

Section 27. *Continuing Cooperation.* It is the purpose of this Agreement to provide a means by which the failure of the ACQUIRED ASSOCIATIONS may be prevented, the depositors and other creditors of the ACQUIRED ASSOCIATIONS may be protected against losses, the thrift and financing needs of the communities in which the ACQUIRED ASSOCIATIONS' offices are located may be served, the ACQUIRING ASSOCIATION and the CORPORATION may receive the benefits and assume the risks contracted for, and expense to the CORPORATION may be reduced. The parties therefore agree that they shall in good faith, and with their best efforts, cooperate to carry out the purposes of this Agreement as described in this section.

Section 28. *Brokerage Commission.* The CORPORATION agrees to pay one half of any brokerage commission or finders fee that the ACQUIRING ASSOCIATION, whether in its own right or as successor to any of the ACQUIRED ASSOCIATION's, the ACQUIRER, STATESMAN or AMERICAN LIFE, pays to an unaffiliated third party pursuant to a binding obligation incurred in connection with the requisition or any of the Mergers, *provided* that the CORPORATION's maximum liability pursuant to this paragraph shall be $170,000.00, and *provided further* that the CORPORATION shall not be obligated under any other provision of this Agreement (including without limitation § 7 hereof) to reimburse or indemnify any party to this Agreement in connection with any such brokerage or finders fee. Any amount owed by the CORPORATION pursuant to this paragraph shall be debited to the Special Reserve Account.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers or agents.

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Date: June 11 1990
Attest:
By:
Its:

STATESMAN BANK FOR SAVINGS, FSB

Date: June 1 1990
Attest:
By:
Its: Vice-President

STATESMAN SAVINGS HOLDING CORP

Date: May 11, 1989
Attest:
By:
Its:

THE STATESMAN GROUP, INC.

Date: May 11, 1989
Attest:
By:
Its:

AMERICAN LIFE AND CASUALTY INSURANCE COMPANY

Date: 3/11/88
Attest:
By:
Its:

BEST AVAILABLE COPY